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THE PROCEDURE IN ACCIDENT INQUIRIES
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THE PROCEDURE  
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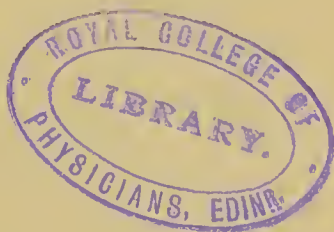
ACCORDING TO  
THE LAW OF SCOTLAND

BY  
HENRY HILTON BROWN

PROCURATOR-FISCAL OF ELGINSHIRE

AUTHOR OF "THE PRINCIPLES OF SUMMARY CRIMINAL JURISDICTION"

"THE ELEMENTS OF PRACTICAL CONVEYANCING"



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## PREFACE

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ACCIDENT INQUIRIES and INVESTIGATIONS form a somewhat complicated subject. The procedure is regulated not only by official instructions, but by numerous enactments, distributed over many Acts of Parliament, and modified by a succession of repeals, re-enactments, extensions, restrictions, and amendments. When an accident happens with the suddenness characteristic of such events, there is often a serious loss of time before the nature and extent of the prescribed investigation can be ascertained. With the object of minimising this loss, I have here collected, analysed, and classified the principal regulations and enactments dealing with the subject. The material portions of the statutes, revised so as to give effect to later modifications, and the relative official forms, notices, and rules, have been printed as an Appendix. One Index gives access to the book and to the Appendix. The work is specially designed for the use of those who are officially or professionally engaged in accident inquiries; those who fill responsible positions in mines, factories, railways, and other dangerous employments; and those who take an interest in measures for the protection of workmen and operatives.

I desire to acknowledge with sincere thanks the valuable aid received from the permanent officials of

the Home Office and Board of Trade, who have furnished me with papers and forms in regard to the inquiries administered by their respective departments; from the admirable and exhaustive "Code of Regulations to be observed in Criminal and other Investigations," recently issued from the Crown Office; from Archibald George Brown, Esq., W.S., Secretary of Carron Company, who has given practical advice and assistance in dealing with Mining Accidents; and from Charles Wilson, Esq., Procurator-Fiscal of Aberdeenshire, Henry Peterkin, Esq., Solicitor, Aberdeen, and J. M. Lochhead, Esq., Sheriff Clerk of Renfrewshire, who have supplied forms used in the investigation of Boiler Explosions and Shipping Casualties.

H. H. B.

ELGIN, *March* 1897.

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## CHAPTER I

### OF ACCIDENTS AND ACCIDENT INQUIRIES

1. *Accident and Casualty.*—The word “accident” has more than one signification. In familiar conversation it is used as synonymous with either “chance” or “mischance,” and, although the latter is the more ordinary meaning of the term, it is applied even with that signification loosely and indiscriminately both to an occurrence which has arisen from human agency, and to one which has arisen from natural causes. This is decidedly inaccurate and confusing. The distinction between those two classes of events is often exceedingly fine, but it has much importance in practice, and for the purpose of conveying a clear idea of our meaning, we shall select a common incident as an illustration. A mason, while engaged in pointing a high wall, standing on a plank suspended by a rope, falls suddenly to the ground and is killed. Setting aside the contingencies that some person may have maliciously cut the rope, which would be a culpable act, or that the mason may have purposely stepped off the plank, which would be a suicidal act, or that he may have been seized with faintness, which would be a natural infirmity, we can suggest at least four reasons for the casualty, each of which would in ordinary speech be called an “accident.” *Firstly*, someone may have unloosed the rope unwitting that there was a man upon the plank attached

to it; *secondly*, the rope, its fastening, or the plank may have broken; *thirdly*, the mason may have inadvertently lost his balance; and, *fourthly*, a sudden squall may have blown him off the plank. Of these modes of occurrence three are accidental, but the last is not so much an accident as what is termed an "act of God." Many of the injurious or fatal mischances, which happen in the course of industrial employments, belong to the latter class, and are not "accidents" in the strict meaning of the term. When it is intended to embrace by a single expression occurrences of both kinds, it is more convenient to use the word "casualty."

2. *Definition of Accident.*—It is not necessary for the purpose of this book that we should propose a perfectly logical definition of the term "accident." The word is allowed a considerable breadth of signification when it occurs in an Act of Parliament devised for the protection of the lieges, as are all statutes dealing with accident inquiries, and, therefore, we need only express the definition in general terms. Subject to this reservation, an accident may be defined as a sudden and unforeseen event, resulting from human intervention, but arising from an act or omission which was not done or omitted with the intention of causing that event (see Stephen's *Criminal Law*, p. 143). This definition excludes events, however sudden and unforeseen, which arise from natural causes without human intervention, and which cannot be guarded against or avoided by reasonable foresight, pains, or care (*Nugent v. Smith*, 29 May 1876, 1 C. P. D. 423); and also events resulting from human intervention, but arising from acts or omissions designed to produce the particular incident which has happened. Of the former kind, called "acts of God," are disasters caused by storm, flood, lightning, earthquake, and other



natural phenomena ; of the latter kind are suicides, murders, and assaults, produced by the working of a diseased mind or of man's savage and revengeful passions. Industrial enterprise has now diverged into so many channels, and invaded so many portions of the earth's surface, that those engaged in furthering its schemes are exposed to injury and death from events falling under each of those classes, and consequently it is often a matter of difficulty, when a casualty occurs, to draw a line of demarcation showing how far it is an accident and how far an act of God. We have already illustrated our meaning by citing an incident, which in one or other of its forms can readily be assigned to its proper class. Let us now choose an illustration where the character of the event is less obvious. A man is occupied in driving piles to secure the steep bank of a river, when the stream, swelled by a thunderstorm among the hills, comes down in sudden flood and sweeps him away. It may be argued, on the one hand, that as the thunderstorm and flood arose from natural causes, without human intervention, the calamity was an act of God ; and, on the other hand, that it was an accident, in respect that a sudden increase in the volume of the water was an ordinary incident of the workman's occupation against which he ought to have been upon his guard, and therefore the occurrence was due to his own remissness. This supposed case impresses the practical lesson that there ought always to be inquiry into the circumstances of a casualty, before settling the category in which it must be placed. Fortunately, it is not essential that this question should in every case be decided before taking the proceedings for investigation authorised by Act of Parliament. The scope and spirit of these measures being beneficent and remedial, and the word "accident" being construed broadly and liberally, it is an invariable canon of con-

struction that where there is reasonable doubt whether a mischance, coming within the purview of the statutes, is an accident or an act of God, it ought in the first instance to be regarded as an accident.

3. *Objects of Inquiry.*—The first object of all remedial legislation on the subject of accidents is *prevention*. The number of such occurrences in various industrial employments increased with the extension of mining and manufacturing, and ultimately assumed proportions so great as to attract the attention of the Legislature and compel the adoption of means for preventing their recurrence. Various methods of attaining that object have been invented. Some Acts of Parliament are designed to prevent accidents by enacting precautionary rules, supported by a system of surveillance and inspection to guard against evasion. Hence arose the admirable and efficient staff of inspectors of mines, factories, workshops, and explosives. Other statutes aim at the attainment of the same result by making accidents costly on account of the pecuniary damages which the injured persons shall have right to demand. The Employers' Liability Acts are examples of this species of legislation. Lastly, there are measures designed to check accidents by means of public or official inquiries and investigations, directed towards ascertaining the circumstances under which each accident has occurred, and thus discovering its cause, if that is possible, and in some cases attaching blame to the responsible person, if there has been fault on the part of anyone. It is with Acts of Parliament of this last class only that the present work is concerned. Confining our attention to these, it is apparent that accident inquiries have two principal objects,—the first, which is of primary importance, to discover the cause or causes of the occurrence ;



the second, which is of less moment, to attach blame (if any) to the proper person. Other purposes may be served by the inquiry, but as these differ with the varying character of the statutory provisions, and of the industrial undertakings to which those provisions relate, their enumeration will be deferred to subsequent chapters, in which we explain particular modes of investigation.

4. *Cause of Accident.*—The first object, as we have seen, in every accident inquiry, is to ascertain the cause or causes which led to the occurrence. This object is not always easy; or even possible, of attainment. An event may be the final effect of a succession of causes, and opinions may differ as to which link of the chain is the prime cause; or it may be impossible to trace out and unite in their true positions the several links of which the chain is composed. We shall again illustrate our meaning by an incident. A mason's labourer is wheeling a heavy stone in a barrow across a plank on the topmost scaffolding of a house in course of erection. The plank breaks, and the barrow upsets. The stone falls, and in its descent smashes the brake of a crane placed on a lower scaffolding. An iron beam is being raised by the crane, the chain of which being freed from the brake suddenly runs out. The beam falls with the chain and strikes a workman who is standing beneath it, fracturing his skull and killing him instantly. What is "the cause" of the workman's death? The immediate or proximate cause is the physical injury sustained by the man, namely, fracture of the skull. The fracture was produced by a blow from the falling beam, which fell through the slipping of the chain, which slipped through the loosening of the brake of the crane, which was released because it was smashed by the falling stone, which

fell on the upsetting of the barrow, which upset because the plank broke. This is a very obvious sequence, yet it does not disclose the *ultimate* cause of the accident and therefore of the death. That may have been the insufficiency of the plank, the recklessness of the labourer in wheeling the stone across it, or any one of many possibilities. The proximate cause of an accidental death is usually found without difficulty, but the intermediate causes may be less apparent, and the ultimate cause undiscoverable. In dealing with a fatal accident, it is necessary first to determine the nature of the bodily injuries which constitute the cause of death from a medical point of view, and then to trace backwards the sequence of events until the agency is ascertained, which set in motion the train of causes that culminated in the production of those injuries. There is, however, not infrequently an insuperable barrier to this process. The accident may have destroyed all trace of its cause. In that event, research will end at a certain point, beyond which we can only speculate as to probabilities, and the investigation need not be continued further.

5. *Blame for Accident.*—Having traced out the causes of an accident, it is sometimes necessary to decide as to whether blame for the occurrence attaches to any person, and, if so, to whom. It is too readily assumed that in every accident someone is to blame. Frequently, no doubt, an accident resulting in death or injury is due to insufficiency of plant or appliances, neglect of precautions, want of foresight, carelessness, or some other cause, inferring fault either on the part of a general class, or of an individual other than the person killed or injured; but in what is probably the majority of cases this is not so. It will be found in those instances that the accident has arisen either from

a cause which no reasonable care or foresight could have avoided, or from the rash or careless conduct of the person who has suffered from it. Another reason why we ought to be chary in imputing blame, is found in the fact that the consequences of a trifling act may be disastrous to a degree far in excess of any fault on the part of him who committed that act. Where such an act infers criminal responsibility, the guilty person must bear the full measure of his guilt; but in those cases where only moral blame attaches to an act, it would be unjust to lay upon the shoulders of one, who has been careless in some small particular, the whole burden of a terrible catastrophe, much of which has but a slight connection with his temporary remissness.

6. *Methods of Inquiry.*—Every occurrence in Scotland which has caused loss of life or serious injury to person or property, is made the subject of a careful inquiry by the local police constable so soon as it comes to his knowledge. This is usually the first step in the investigation. The constable reports the facts to his superior officer, who examines the report, and, if satisfied that it is as complete as circumstances permit, transmits it to the Procurator-Fiscal of the county or district in which the casualty has taken place. In addition to such police reports, the Procurator-Fiscal derives information from other sources. With respect to fatal accidents in asylums and poorhouses, the instructions issued by the Lunacy Commissioners and the Local Government Board provide that each case is intimated by the governor with all despatch to the Procurator-Fiscal of the county or district within which the asylum or poorhouse is situated. Similar provision, as regards fatal accidents to prisoners, is made by the Prisons (Scotland) Act, 1877. He is also favoured with communications, both open and



anonymous, from persons professing to have knowledge of matters calling for investigation. It is, therefore, extremely improbable that any serious accident can happen within his jurisdiction which does not come to the knowledge of the Procurator-Fiscal through one or other of those channels. In the ordinary case, whenever he obtains information, he adopts the procedure by private inquiry or precognition fully described in Chap. II. ; but there are a great many accidents, both fatal and non-fatal, as to which procedure of a special character has been prescribed. Public inquiries may be ordered as to most of these. The Procurator-Fiscal conducts the investigation in some instances ; in others the procedure is administered by the Home Secretary and inspectors appointed by him ; and in others it is controlled by the Board of Trade and inspectors appointed by them. We propose to arrange the leading methods of inquiry in groups, and to devote to the explanation of each a separate chapter, where as full details will be given as the space at our disposal permits. The following synopsis may serve to impart a general idea of the scheme of the book :—

I. *Inquiries conducted principally by the Procurator-Fiscal.*

1. Accidents of every kind, Chapter II.
2. Fatal Accidents to Prisoners, Chapter II.
3. Fatal Industrial Accidents, Chapter III.

II. *Inquiries directed by the Home Secretary.*

4. Accidents in Mines and Quarries, Chapter IV.
5. Accidents in Factories and Workshops, Chapter V.
6. Accidents from Explosive Substances, Chapter VI.

III. *Inquiries directed by the Board of Trade.*

7. Accidents in Dangerous Employments, Chapter VII.
8. Accidents on Railways, Chapter VIII.
9. Accidents from Boiler Explosions, Chapter IX.
10. Accidents on board Ships and Boats, Chapter X.

It has to be observed that, although the Procurator-Fiscal co-operates with the officials of the Home Office and the Board of Trade, and gives them all the aid which lies in his power, as regards the investigation of the groups of accidents classified under heads II. and III., he has a duty to perform independently of those officials. He is bound to investigate *every fatal accident*, of whatever description it may be, which happens within his jurisdiction. In dealing with *non-fatal* accidents he is guided by the gravity of the occurrence, the danger caused to the lieges, and the special circumstances of each case, his duty to investigate not being so absolute in those instances as it is when a death has ensued. General accidents happen from a variety of causes not connected with industrial occupations; for example, from drowning, burning, scalding, suffocation, riding, driving, cycling, falls, poisoning, use of weapons, etc. The Legislature has not yet provided for any public inquiry in Scotland as regards deaths due to such accidents, and none appears to be called for in the public interest. These deaths are investigated and the circumstances considered, first by the police, then by the Procurator-Fiscal, and lastly by Crown counsel. It is not probable that a public inquiry could elicit any fact which would not be detected by those trained ob-

servers, and it is certainly not desirable that, without some undoubted public advantage, the feelings of relatives, already harrowed by the terrible death of one dear to them, should be lacerated afresh by a repetition of the painful tale in open Court.

## CHAPTER II

### OF ACCIDENT INQUIRIES BY THE PROCURATOR-FISCAL

1. *Private Inquiries and Precognitions.*—It was pointed out in the preceding chapter (p. 7), that every occurrence, which involves loss of life or serious injury to person or property, is reported by the police to the Procurator-Fiscal of the county or district where it happens, and that in addition to this source of information, he may receive other communications on the subject of accidents. When *no loss of life* has resulted, the Procurator-Fiscal as a rule merely satisfies himself that no criminal responsibility attaches to anyone, and that there is no danger menacing the lieges which in the public interest he ought to remove; but it is his duty to forthwith investigate the circumstances in all cases of *death from accident*, and in most cases of accident for which special provision respecting inquiry has been made by the Legislature. Occurrences of the latter sort, excluding fatal accidents to prisoners, which are dealt with in the second paragraph of this chapter, may be arranged in eight groups, each of which we shall, for convenience, discuss in a separate chapter:—

(1) Fatal Accidents in Industrial Employments or Occupations (Chapter III.).

(2) Accidents in Mines and Quarries (Chapter IV.).

- (3) Accidents in Factories and Workshops (Chapter V.).
- (4) Accidents from Explosive Substances (Chapter VI.).
- (5) Accidents in Dangerous Employments (Chapter VII.).
- (6) Accidents on Railways (Chapter VIII.).
- (7) Accidents from Boiler Explosions (Chapter IX.).
- (8) Accidents on board Ships and Boats (Chapter X.).

In each of these groups particular rules have to be followed, which will be learned on a perusal of the appropriate chapters. In the very numerous cases which do not belong to any special class, the Procurator-Fiscal may investigate either by a personal inquiry on the spot, or, if he deems it advisable, by a formal precognition. The object of both inquiry and precognition is the elucidation of all the facts connected with the accident and the death of the individual. As it may be necessary to compel the attendance of witnesses for examination, he presents a petition to the Sheriff, obtains a warrant, fixes a convenient place and time for holding the inquiry, and cites witnesses to attend at it. Unless the witnesses are few in number, or there is sufficient cause for making a different arrangement, precognitions are held as near as possible to the scene of the accident. In every case the *locus* ought to be visited by the Procurator-Fiscal. There is no hard and fast rule as to the form or terms of the petition used in these inquiries. It ought, however, to disclose briefly the general facts according to the information lodged with the Procurator-Fiscal, and, in particular (so far as ascertained),—



- (a) The full name and designation of the injured person or persons ;
- (b) The day and hour at which the accident happened ;
- (c) The place at which it occurred, stating the parish and burgh or county ;
- (d) The manner in which the injuries were sustained ;
- (e) The date on which death resulted from the accident (if a fatal one) ; and
- (f) The place and parish in which such death occurred.

When a fatal accident happens to a person whose name is not ascertained, the petition may describe him as, “a man whose name and designation are at present unknown to the petitioner.” It is not in every case necessary to adduce medical evidence as to the cause of death. When the character of the injuries sustained leaves no possible doubt that the subsequent death was due to the accident, as, where a man’s head is severed from his body—such evidence is useless. In more doubtful cases, and especially if a criminal charge is likely to follow,—as in accidents from careless or reckless driving,—a medical report may be indispensable, and in some instances, even a *post-mortem* examination of the body. When the Procurator-Fiscal expects that an autopsy will be wanted, he adds to the petition a special crave,—“Also to grant warrant and remit to Robert Maxwell, Doctor of Medicine, Blankton, to examine, and, if necessary, to dissect the body of the said George Gilbert, in order to ascertain the cause of death, and thereafter to report such examination and dissection to your Lordship.” The following forms indicate the general shape taken by the proceedings :—

(1) *Petition*

*Blankton, 18th January 1897.*

Unto the Honourable the Sheriff of Blankshire,  
The Petition of John Smith, Procurator-Fiscal of  
Blankshire, for the Public Interest ;

*Humbly Sheweth*,—That from information which the petitioner has received, it appears that George Gilbert, labourer, Lynmouth, at three o'clock in the afternoon of 16th January 1897, at a point on the shore of the Blank Firth, in Glenavon Parish, Blankshire, two hundred yards in a north-easterly direction from the Greyscaurs Lighthouse, fell over a precipice, and thereby sustained injuries, as the result of which he died instantly.

May it therefore please your Lordship to grant warrant to lead a precognition in the premises ; and to cite all witnesses and havers whom it may be necessary to examine.

According to Justice, etc.

JOHN SMITH, *P.-F.*

(2) *Warrant*

*Blankton, 18th January 1897.*—The Sheriff - Substitute having considered the foregoing petition, grants warrant as craved.

RALPH ABERCROMBIE.

(3) *Citation of Witness*

I, CHARLES ROBERTSON, police constable of Blankshire, in name and authority, and by warrant of the Sheriff of Blankshire, hereby lawfully summon, warn, and charge you, William Kennedy, light-keeper, Greyscaurs Lighthouse, Glenavon Parish, Blankshire, to compear within the Sheriff Court House, County Buildings, Blankton, upon Thursday, the twenty-first day of January 1897 years, at eleven o'clock forenoon, to be examined in precognition at the instance of the Procurator-Fiscal of Court, in regard to the death of George Gilbert,

labourer, Lynmouth; with certification: This I do on the eighteenth day of January 1897.

CHARLES ROBERTSON,  
*Police Constable.*

In cases where there is no doubt or difficulty about the facts, a personal inquiry by the Procurator-Fiscal without citation of witnesses is generally sufficient; but when there is doubt, and especially when there is suspicion of foul play or criminal recklessness, a full precognition is led. Each witness is examined separately and in private. His answers are written down, the written statement is read over to and signed by him, and is authenticated by the initials of the Procurator-Fiscal. When it is desired to compel the production of articles or documents which a witness is unwilling to produce, a warrant may be obtained from the Sheriff on a petition stating the difficulty that has arisen. This step is, however, almost unknown in practice, as witnesses in such matters are only too glad to assist in elucidating the facts. It is not customary to precognosce any person against whom it appears likely that a criminal charge is going to emerge in respect of his share in the occurrence.

2. *Public Inquiries.*—In addition to the inquiries under the Fatal Accidents Inquiry (Scotland) Act, 1895, which are of such importance as to require a chapter to themselves, and the various special proceedings described in Chaps. IV. to X., there is a class of accidents regarding which the investigation must be held in public, namely, fatal accidents to *prisoners*. Immediately on such an occurrence, the governor of the prison in which the prisoner was confined transmits a report to the Procurator-Fiscal

of the jurisdiction within which the prison is situated, whose duty it is, immediately on receipt of the governor's report, to present a petition to the Sheriff asking that a public inquiry may be held on the body of the deceased prisoner (40 & 41 Vict. c. 53, s. 53). This course has to be followed, not only as regards fatal accidents, but in the case of every prisoner who dies within a prison (*ibid.*). The same procedure may be used in both cases. Where it is practicable, in fixing the diet for the public inquiry, sufficient time is permitted to intervene between the day of the death and the day of holding the inquiry, to allow the attendance of those who are next of kin to the deceased (*ibid.*). So soon as he obtains the Sheriff's order and warrant, the Procurator-Fiscal intimates to such next of kin (if he is able to discover them) the place and date appointed for the public inquiry, and cites such witnesses as are necessary to prove beyond doubt—(1) the identity of the deceased; (2) the circumstances of the accident; and (3) the time, place, and cause of death. Although the Act directs an "inquiry on the body," it is not the practice to view the body; but the witnesses who depone to *identity* must do so, and be able to swear that the deceased was well known to them, and that it is his body which they have seen. The following forms illustrate the procedure:—

(1) *Petition*

*Blankton, 17th January 1897.*

Unto the Honourable the Sheriff of Blankshire,  
The Petition of John Smith, Procurator-Fiscal of  
Blankshire, for the Public Interest;

*Humbly Sheweth*,—That from information which the petitioner has received, it appears that Charles



Thomson, prisoner in the prison of Blankton, about seven o'clock in the morning of 17th January 1897, within the said prison, fell over the railing of a stair, and thereby sustained injuries, as the result of which he died within said prison at ten o'clock forenoon of the same day.

May it therefore please your Lordship to direct a public inquiry in terms of the 53rd section of the Prisons (Scotland) Act, 1877, to be held in regard to the death of the said Charles Thomson, and to grant warrant to cite witnesses and havers to attend at said inquiry at the instance of the petitioner.

According to Justice, etc.

JOHN SMITH, *P.-F.*

## (2) *Warrant*

*Blankton, 17th January 1897.* — The Sheriff-Substitute having considered the foregoing petition, directs a public inquiry in terms of the 53rd section of the Prisons (Scotland) Act, 1877, to be held in regard to the death of the said Charles Thomson; appoints the said inquiry to be held within the Sheriff Court House, County Buildings, Blankton, on Wednesday, the twentieth day of January current, at eleven o'clock forenoon; and grants warrant to officers of Court to cite witnesses and havers to attend at said inquiry at the instance of the Procurator-Fiscal of Court.

RALPH ABERCROMBIE.

## (3) *Citation of Witness*

I, CHARLES ROBERTSON, police constable of Blankshire, in name and authority, and by warrant of the Sheriff of Blankshire, hereby lawfully summon, warn, and charge you, Francis M'Gregor, governor of the prison of Blankton, to compear within the Sheriff Court House, County Buildings, Blankton, upon Wednesday, the twentieth day of January 1897 years,

at eleven o'clock forenoon, to be examined as a witness at the instance of the Procurator-Fiscal of Court, at a public inquiry, in terms of the 53rd section of the Prisons (Scotland) Act, 1877, in regard to the death of Charles Thomson, prisoner in the prison of Blankton; with certification: This I do on the seventeenth day of January 1897.

CHARLES ROBERTSON,  
*Police Constable.*

#### (4) *Record of Procedure*

At Blankton, and within the Sheriff Court House, County Buildings there, the twentieth day of January 1897 years, at a public inquiry, in terms of the 53rd section of the Prisons (Scotland) Act, 1877, in regard to the death of Charles Thomson, a prisoner in the prison of Blankton,—In presence of Ralph Abercrombie, Esquire, Sheriff-Substitute of Blankshire,—Compeared John Smith, Procurator-Fiscal of Blankshire, for the public interest, and John Thomson, labourer, Blankton, a brother of the deceased.

The following witnesses were adduced by the Procurator-Fiscal and examined by him in regard to the death of the said Charles Thomson, namely:—

FRANCIS M'GREGOR, governor of the said prison, who being solemnly sworn and examined, depones. [*Here follows deposition as to circumstances of accident and death, signed by the witness and the Sheriff-Substitute.*]

ROBERT GRAY, medical officer of the said prison. [*Proves death and cause.*]

JOHN THOMSON, above designed. [*Proves identity of deceased.*]

At Blankton, the twentieth day of January 1897. The Sheriff-Substitute having considered the evidence adduced, Finds that Charles Thomson, a prisoner in the prison of Blankton, died there at ten o'clock forenoon on the seventeenth day of January 1897, and that the cause of his death was fracture of the skull

sustained by him in consequence of his having accidentally fallen over the railing of a stair in the said prison at seven o'clock in the morning of the date last above mentioned.

RALPH ABERCROMBIE,  
*Sheriff-Substitute.*

3. *Report to Crown Office.*—At the close of the proceedings in every inquiry, whether private or public, the Procurator-Fiscal reports the result to Crown counsel, if the matter is of sufficient importance. An accident, which on first information appeared serious or suspicious, may on investigation be found to be of a simple or ordinary character. The procedure in reporting cases will be found in the code of regulations recently issued from the Crown Office, which is in the possession of everyone officially concerned, and is liable to alteration from time to time. No advantage, therefore, would be derived from the insertion at this place of an example of a report.

## CHAPTER III

### OF PUBLIC INQUIRIES AS TO FATAL INDUSTRIAL ACCIDENTS

1. *Statute regulating Procedure.*—The procedure in the inquiries described in this chapter, is regulated by the Fatal Accidents Inquiry (Scotland) Act, 1895 (58 & 59 Vict. c. 36). For brevity we shall refer to it throughout the chapter as “Act 1895.” This statute creates the most important class of public inquiries, and we therefore propose to devote a greater space to an account of the proceedings under it than will be required for the description of any of those mentioned in subsequent chapters. Public inquiries under the Act of 1895 have to be held in relation to most of the accidents for which special methods of investigation have been provided, and as the former class of inquiry is made more perfect, inquiries of the latter class will probably tend to disappear.

2. *Fatal Industrial Accidents.*—The Act extends to and includes all cases of death of any person or persons, whether employers or employed, engaged in an industrial employment or occupation in Scotland, due, or reasonably believed to be due, to accident occurring in the course of such employment or occupation (Act 1895, s. 2). Two important observations have to be made on this enactment. In the first place, it is



only an accident resulting in death which forms the subject of a public inquiry. Where injuries alone have been sustained, however severe they may be, the statutory investigation is not applicable. In the next place, the scope of the Act is limited to the accidental death of a person engaged in an industrial employment or occupation. Deaths from non-industrial accidents have still to be dealt with by inquiry or precognition at the instance of the Procurator-Fiscal, as explained in the last chapter.

It is unnecessary to reiterate what was said in Chap. I. as to the meaning of the term accident, and the distinction between events which are "accidents" and those which are "acts of God." It may, however, be pointed out that the Legislature in framing the Act of 1895 seem to have had in contemplation *accidents only* in the strict meaning of the term, and that the statute does not extend to the case of the death of any person, which is due to storm, flood, or other natural cause, without human intervention. The duty of determining what deaths fall under the Act, lies in the first instance with the Procurator-Fiscal of the county or district in which the accident takes place (Act 1895, s. 3 (1)). In cases of reasonable doubt it is probably better that he should assume that the Act applies.

The Act includes employers as well as employed; but much ingenuity has been brought to the discussion of the question whether it extends to the death of one who is neither employed himself, nor has a workman under him, *e.g.* a person working in his own house (*vide Scots Law Times*, vol. iii. pp. 90 and 121). Let us consider how the exclusion of the third class would result in practice. According to this construction, if one man who carries on a trade in his own house, using a gas engine to drive machinery, and employing a boy to look after the engine, is acci-

dentally killed, an inquiry must be held under the Act, because he is an employer; whereas if another man, who has a similar establishment, *minus* the boy, is accidentally killed, no inquiry need be held, because he is neither employer nor employed. This result would be unfortunate. It is not unreasonable to construe the words, "whether employer or employed," as explanatory and not restrictive, and as inserted to remove a possible doubt as to whether the Act extended to both masters and workmen. We are inclined to read as the leading phrase of the clause the words, "any person or persons engaged in any industrial employment or occupation." The whole scope of the Act shows that it was designed to meet the case of every accident which has caused the death of a person engaged in manual labour, or the working or management of machinery or animals, or in the superintendence of these operations, and we would expect an express provision, if it were intended to exclude the statutory investigation in the case of a man so engaged, simply because he pursued his avocation by himself without employing a workman under him.

In the Act, unless the context otherwise requires, "industrial employment or occupation" is defined as meaning employment for, or occupation in,—

- (a) the performance of any manual labour; or
- (b) the superintendence of any manual labour; or
- (c) the working, management, or superintendence of machinery or other appliances; or
- (d) the working, management, or superintendence of animals used in the prosecution of any work (Act 1895, s. 7).

This definition seems broad enough to cover every species of industry or work; but a difference of opinion exists as to whether the Act extends to the accidental

deaths of domestic and menial servants. There is no exclusion of these, as in the Employers and Workmen Act, 1875, s. 10, the Employers' Liability Act, 1880, the Notice of Accidents Act, 1894, s. 2, and the Factory and Workshop Act, 1895, s. 23. On the other hand, an article which appeared in the *Scotsman* shortly after the statute came into operation states: "It is understood that fatal accidents in domestic service are not intended to be included, such service not being industrial occupation." The difficulty centres on the construction of the term "industrial occupation" as used in the Act. The statute defines it as meaning "employment in the performance of any manual labour," which is, of course, labour performed with the hands, and it cannot be denied that a butler, a gardener, or a cook works with his or her hands.

Each Procurator-Fiscal must decide for himself whether the particular employment in which the deceased was engaged was or was not an industrial one, and, having made up his mind that it was of that character, must be prepared to prove that the accident arose out of such employment. The remarks on this subject in Chap. I. p. 3 demonstrate that an accident to a person engaged in a certain work is not always of necessity connected with that work, and unless it is so connected the statutory provisions do not extend to the resultant death. It is not required, however, that a workman should be on the premises of the employer at the time of the accident, if the accident actually arose in the course of his employment; as, for example, a person driving a traction engine along the highway.

The statute further prescribes that the deaths to which it extends must be "due, or reasonably believed to be due, to accident." What circumstances justify "reasonable belief" is a question for the Procurator-

Fiscal in the first place. If he is in doubt, he may add to his petition a crave, not only for precognition, but also for medical examination and even dissection, and defer obtaining an order for a public inquiry until he obtains the doctor's report. The remarks on the subject of medical evidence in Chap. II., and the form of crave shown at p. 13, are equally applicable here, but in the great majority of industrial accidents the connection between the death and the occurrence is so patent as to compel reasonable belief without further evidence. Such belief will be more readily conceded where the accident is capable of producing the death, and there is no good reason for suspecting some other agency (*Scots Law Times*, vol. iii. p. 91).

3. *Preliminary Precognition*.—Upon the occurrence of any death to which the Act applies, the Procurator-Fiscal of the county or district in which the accident has taken place, so soon as he receives information of the death or deaths, proceeds to collect evidence thereanent (Act 1895, s. 3 (1)). This provision is at first sight inconsistent with the direction which immediately follows, that the Procurator-Fiscal is to *forthwith* present a petition to the Sheriff; but it will not create difficulty in practice. The Procurator-Fiscal almost invariably receives information of fatal accidents through the medium of police reports. These contain a statement sufficiently lucid and detailed to enable him to decide whether *prima facie* the death reported falls within the Act, and then to frame the necessary petition. Having done this he is able to collect evidence as to the occurrence, and to discover what witnesses should be cited to attend the public inquiry. On the subject of medical evidence it will be sufficient to refer to the remarks in Chap. II. p. 13, the same principles being applicable in private and



public inquiries, and it will be more convenient to defer explanation of the proceedings peculiar to inquiries in regard to accidents in mines, quarries, factories, workshops, etc., to the chapters dealing with those subjects. Except in a doubtful case a full precognition is unnecessary. In collecting evidence the objects of the inquiry must be kept in view (see par. 4, *infra*), and the elucidation of the following facts in particular will be the first consideration :—

- (a) the identity of the deceased person ;
- (b) the exact day and hour of the accident ;
- (c) the place, parish, and burgh or county where it occurred ;
- (d) the circumstances of the accident, how it happened, who were present, and so forth ;
- (e) the exact day and hour of death ;
- (f) the place, parish, and burgh or county where the person died ;
- (g) the cause of death ;
- (h) the full name and designation of the wife, husband, or nearest known relative of the deceased ; and
- (i) the full name and designation of his employer (if any).

Should the Procurator-Fiscal perceive in the course of his precognition that a criminal charge is likely to arise in connection with the death, he must at once take the usual and necessary steps in conformity with the practice in criminal investigations. He does this in addition to taking the steps necessary for a statutory inquiry. Another contingency, which now and then arises, is the impossibility of recovering the body of the deceased ; as, for instance, when he has fallen into the sea or a blast furnace. In such cases the Procurator-Fiscal collects evidence to establish, — firstly, the



identity of the victim ; and, secondly, his death. On the other hand, it is not enough to prove that a person is dead, if it is impossible to prove the occurrence of an accident capable of causing his death.

With reference to the person who is to take the initiative in these proceedings, the Act directs the Procurator-Fiscal who has jurisdiction at the scene of the accident to do so. The Procurator-Fiscal of the jurisdiction in which the death occurred, if a different one, has no duty except to help his brother of the other jurisdiction by obtaining evidence as to the circumstances attending the death. The expression "Procurator-Fiscal" means the Procurator-Fiscal of a county or of a district, and includes the Procurators-Fiscal of the county of the city of Edinburgh and of the city and burgh of Aberdeen (Act 1895, s. 7). The meanings of the terms "county" and "district" in the foregoing definition are thus explained,—the expression "county" extends to the limits within which the Sheriff has jurisdiction, whether by statute or at common law ; and the expression "district" means any part of a county for which a separate Procurator-Fiscal is appointed, and includes any county or combination of counties, or parts of counties, for which there is one Sheriff Court and one Procurator-Fiscal (*ibid.* s. 7). There is usually no difficulty as to the question of jurisdiction, except in the case of maritime accidents. As regards these the Act applies where the occurrence takes place,—

- (a) on board a British ship within the three miles limit ; or
- (b) on board any ship, British or foreign, while in a Scottish port, or in a Scottish river, or in Scottish waters *intra fauces terræ*, whether within or beyond the three miles limit.

It thus follows that if a ship is within the three miles limit, the Procurator-Fiscal of the county or district in or opposite to which the accident occurred, initiates proceedings; if the ship is in Scottish waters beyond that limit, but *intra fauces terræ*, this duty falls upon the Procurator-Fiscal of the county or district nearest to the scene of the accident. Of course, in all cases of urgency or suspicion, the Procurator-Fiscal who first hears of the fatality makes an immediate investigation, although the statutory procedure may be ultimately adopted by another. The Procurator-Fiscal conducting the precognition has to keep in view that no power is conferred upon the Sheriff to detain a ship or her crew, and that for the purpose of preserving evidence he may have to adopt the procedure under s. 5 (2) of the Act described in pars. 11 and 12, *infra*.

It will be convenient if we insert at this place a list of the counties and districts in Scotland for which separate Procurators-Fiscal have been appointed, with the county in which each district is situated, and the circuits within which the whole are grouped, namely:—

| COUNTIES.      | DISTRICTS.          | COUNTIES.      | DISTRICTS. |
|----------------|---------------------|----------------|------------|
| I. HOME.       |                     | Argyle . . .   | Tobermory. |
| Edinburgh . .  | Edinburgh (County). | Bute . . .     | Rothsay.   |
| " . . .        | Edinburgh (City).   | Clackmannan    | Alloa.     |
| Haddington . . | Haddington.         | Dumbarton . .  | Dumbarton. |
| Linlithgow . . | Linlithgow.         | Kinross . . .  | Kinross.   |
| Peebles . . .  | Peebles.            | Lanark . . .   | Lanark.    |
|                |                     | " . . .        | Hamilton.  |
|                |                     | " . . .        | Airdrie.   |
|                |                     | " . . .        | Glasgow.   |
|                |                     | Renfrew . . .  | Paisley.   |
|                |                     | " . . .        | Greenock.  |
| Argyle . . .   | Inveraray.          | Stirling . . . | Stirling.  |
| " . . .        | Fort-William.       | " . . .        | Falkirk.   |
| " . . .        | Campbeltown.        |                |            |
| II. WEST.      |                     |                |            |

| COUNTIES.        | DISTRICTS.         | COUNTIES.                 | DISTRICTS.            |
|------------------|--------------------|---------------------------|-----------------------|
| III. NORTH.      |                    | Orkney and }<br>Zetland } | Kirkwall.<br>Lerwick. |
| Aberdeen . . .   | Aberdeen (County). | Perth . . .               | Perth.                |
| " . . .          | Aberdeen (City).   | " . . .                   | Dunblane.             |
| Banff . . .      | Banff.             | Ross . . .                | Dingwall.             |
| Caithness . . .  | Wick.              | " . . .                   | Tain.                 |
| " . . .          | Thurso.            | " . . .                   | Stornoway.            |
| Cromarty . . .   | Cromarty.          | Sutherland . . .          | Dornoch.              |
| Elgin . . .      | Elgin.             | IV. SOUTH.                |                       |
| Fife . . .       | Cupar.             | Ayr . . .                 | Ayr.                  |
| " . . .          | Dunfermline.       | " . . .                   | Kilmarnock.           |
| Forfar . . .     | Forfar.            | Berwick . . .             | Duns.                 |
| " . . .          | Dundee.            | Dumfries . . .            | Dumfries.             |
| Inverness . . .  | Inverness.         | Kirkcudbright . . .       | Kirkcudbright.        |
| " . . .          | Fort-William.      | Roxburgh . . .            | Jedburgh.             |
| " . . .          | Lochmaddy.         | Selkirk . . .             | Selkirk.              |
| " . . .          | Portree.           | Wigtown . . .             | Wigtown.              |
| Kincardine . . . | Stonehaven.        | " . . .                   | Stranraer.            |
| Nairn . . .      | Nairn.             |                           |                       |

Letters regarding accidents may be addressed—  
 “The Procurator-Fiscal of Blankshire, Blankton,”  
 using the official title.

4. *Petition*.—The Procurator-Fiscal of the jurisdiction, on the occurrence of a death to which the Act applies, must forthwith present to the Sheriff a petition craving him to hold a public inquiry in regard to the cause or causes of the death or deaths, and the circumstances of the accident (Act 1895, s. 3 (1)). This petition narrates briefly the facts so far as these are known to the Procurator-Fiscal (*ibid.* s. 4 (1)). If more deaths than one have resulted from the same accident, the petition and inquiry relate to the whole deaths which have resulted therefrom (*ibid.* s. 3 (2)). In framing the petition it is necessary to narrate facts showing *prima facie* that the death is one of a class to which the statute extends. Warrant for precognition, and, when necessary, for medico-legal examination of the body, will be asked, as well as an order for

public inquiry (see p. 13). The general shape of the petition may be gathered from the following illustration, which will be modified to suit each case; as, for example, by substituting the word "occupation" for "employment," when the deceased was not a workman, or the latter term is otherwise more appropriate:—

*Blankton, 1st December 1896.*

Unto the Honourable the Sheriff of Blankshire,

The Petition of JOHN SMITH, Procurator-Fiscal of  
Blankshire, for the Public Interest;

*Humbly Sheweth*,—That from information which the petitioner has received, it appears that William Thomson, engine-driver, 36 High Street, Blankton, at three o'clock in the afternoon of 28th November 1896, in the course of his industrial employment as an engine-driver in the service of Robert Inglis, mill-owner, Blankton, driving a steam traction engine on the public road leading from Blankton to Lynmouth, and at a part thereof in Glenavon Parish, Blankshire, opposite the steading at Muirside Farm, fell off the said engine while it was in motion, one of its wheels passing over his legs, and thereby sustained injuries, as the result of which he died at six o'clock in the afternoon of 29th November 1896, within the hospital at Lynmouth, Glenavon Parish aforesaid.

May it therefore please your Lordship to grant warrant to lead a precognition in the premises, and to cite all witnesses and havers whom it may be necessary to examine; and further, to direct a public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, to be held in regard to the cause of the death of the said William Thomson, and the circumstances of the accident.

According to Justice, etc.

JOHN SMITH, *P.-F.*



5. *Order and Warrant*.—Upon presentation of the petition the Sheriff pronounces an order directing that a public inquiry in regard to the death shall be held. The date, which is specified in the order, must be a time as soon as reasonably possible, and the place of inquiry is in such Court House within the Sheriff's jurisdiction as may be nearest to the scene of the accident, or, if special circumstances appear to the Sheriff to make it expedient, in such other Court House or other building as may be available and convenient. The Sheriff also grants warrant to cite witnesses and havers to attend at such inquiry, at the instance of the Procurator-Fiscal, and of all parties who may be entitled to appear (Act 1895, s. 4 (1)). If the Sheriff is of opinion that the facts narrated in the petition do not disclose *prima facie* an occurrence falling within the statute, he grants warrant for precognition only, and the Procurator-Fiscal proceeds in the manner explained in Chap. II. Should that precognition disclose additional facts tending to bring the matter within the scope of the Act, it is laid before the Sheriff, who then pronounces an order directing a public inquiry. The order and warrant may be in the following form, adding a warrant and remit for *post-mortem* examination, if craved:—

*Blankton, 1st December 1896*.—The Sheriff-Substitute having considered the foregoing petition, grants warrant to lead a precognition, and to cite witnesses and havers for examination as craved; directs a public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, to be held in regard to the death of the said William Thomson; appoints the said inquiry to be held within the Sheriff Court House, County Buildings, Blankton, on Thursday, the tenth day of December current, at eleven o'clock forenoon; and grants warrant to officers of Court to cite witnesses



and havers to attend at said inquiry at the instance of the Procurator-Fiscal of Court, and of all parties who are entitled to appear at the said inquiry.

RALPH ABERCROMBIE.

6. *Intimation to Sheriff Clerk.*—The Procurator-Fiscal, either at the same time that he presents the petition, or after the Sheriff's order is pronounced, furnishes to the Sheriff Clerk, so far as possible, by letter posted or delivered, information as to the names and addresses of the wife or husband or the nearest known relative, and of the employer, if any, of each person who has lost his life in the accident (Act 1895, s. 3 (1)). Occasionally the employer and the nearest known relative is one and the same person,—as in the case of a fisherman employing his son to assist him in prosecuting his calling. The words, “employer, if any,” refer to the contingencies that the deceased may either have been himself an employer, or a person working by himself, neither employing nor employed.

7. *Citation of Witnesses.*—When the Procurator-Fiscal has ascertained the witnesses who can give relevant and material evidence, he proceeds to cite them to attend at the inquiry. No period of notice is fixed, but at least forty-eight hours should be allowed before the date appointed. He ought also to arrange for the attendance of a shorthand writer to record the evidence, if it is the practice of the Court to employ that method of taking notes. The following form of citation may be used :—

I, CHARLES ROBERTSON, police constable of Blankshire, in name and authority and by warrant of the Sheriff of Blankshire, hereby lawfully summon, warn, and charge you, Arthur Smith, fireman, 4 Scott

Street, Blankton, to compear within the Sheriff Court House, County Buildings, Blankton, upon Thursday, the tenth day of December 1896 years, at eleven o'clock forenoon, to be examined as a witness at the instance of the Procurator-Fiscal of Court, at a public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, in regard to the death of William Thomson, engine-driver, 36 High Street, Blankton; with certification: This I do on the third day of December 1896.

CHARLES ROBERTSON,  
*Police Constable.*

Witnesses for all parties entitled to appear may be cited in the same manner in virtue of the original deliverance, substituting the name and designation of such party for the words "the Procurator-Fiscal of Court." The parties entitled to appear will be found on reference to par. 15, *infra*.

8. *Intimation to Persons interested*.—Intimation of the time and place of the inquiry is made by the Sheriff Clerk, so far as possible, by letter, posted or delivered, to the wife or husband or to the nearest known relative, and to the employer, if any, of each person who has lost his life in the accident (Act 1895, s. 4 (2)). The information to enable him to do this has been supplied by the Procurator-Fiscal. The words "Sheriff Clerk" include "Sheriff Clerk Depute." (*ibid.* s. 7). The letters to the widow and employer may be in the terms illustrated below, deleting in the latter case the words "your husband," and adding "in your employment."

SHERIFF CLERK'S OFFICE,  
BLANKTON, 1st December 1896.

MADAM,—Intimation is hereby given to you in terms of the Fatal Accidents Inquiry (Scotland) Act,

1895, that the Sheriff of Blankshire will hold a public inquiry under the said Act, within the Sheriff Court House, County Buildings, Blankton, on Thursday, 10th December current, at eleven o'clock forenoon, in regard to the death of your husband, William Thomson, engine-driver, 36 High Street, Blankton.—I am, Madam, your obedient servant,

Mrs. MARY THOMSON,  
36 HIGH STREET, BLANKTON.

CHAS. GRAHAM,  
*Sheriff Clerk.*

Some Sheriff Clerks prefer to furnish a brief note of the time, place, and circumstances of the accident. This form is optional, but if it is adopted the particulars are added at the end of the letter thus: "Which occurred on 29th November 1896, as the result, it is believed, of injuries sustained by accident on the previous day on the public road leading from Blankton to Lynmouth, and at a part thereof in Glenavon Parish, Blankshire, opposite the steading at Muirside Farm, when engaged in your employment as an engine-driver driving a steam traction engine." When the inquiry relates to the death of a foreigner, the Sheriff Clerk, where practicable, sends notice to the nearest consul of the country to which the deceased belonged, and if the deceased was a foreign seaman, also to the master or other senior officer of his ship. The same form of letter may be used.

9. *Intimation to Government Officials.*—In any case in which it is competent for any official or department of Her Majesty's Government to cause public inquiry to be made into the facts and circumstances of the accident under the provisions of any statute in force for the time being, the Sheriff Clerk makes intimation to such official or department (Act 1895, s. 4 (2)). The same form of letter as in

last paragraph may be used, omitting the allusions to relationship or employment. The cases here referred to are those provided for by the various statutes analysed in subsequent chapters of this book, which must be referred to for a more particular account of the officials and departments to whom notice must be sent. By the present instructions the statutory intimation is made to the Inspector of Mines for the district, in the case of an accident in or about a mine or quarry; and in the case of an accident in a factory or workshop, to the Inspector of Factories and Workshops for the district. The Sheriff Clerk must in this matter attend to the instructions issued by the Crown authorities from time to time. In addition to the two classes of inspectors named above, special intimations are required in cases of death from accident arising from explosives, in dangerous employments, on railways, from boiler explosions, and on board ships and boats, enumerated in Chaps. VII. to X.

10. *Public Notice*.—The Sheriff Clerk also causes intimation of the time and place of the inquiry to be made by advertisement in a newspaper circulating in the district, or if there be more than one such newspaper, then in two of them (Act 1895, s. 4 (2)). The following form of notice is generally adopted:—

Under the Fatal Accidents Inquiry (Scotland) Act, 1895: Intimation is hereby made that the Sheriff of Blankshire will hold a public inquiry within the Sheriff Court House, County Buildings, Blankton, on Thursday, 10th December 1896, at eleven o'clock forenoon, in regard to the death of William Thomson, 36 High Street, Blankton, lately an engine-driver in the employment of Robert Inglis, millowner, Blankton.

CHAS. GRAHAM,  
*Sheriff Clerk.*



11. *Warrant to Secure*.—It is competent to the Sheriff at, or at any time subsequent to, the presentation of the petition, to grant warrant to officers of the law to take possession of, and to hold in safe custody, subject to the inspection of parties interested, any article or thing which it may be considered necessary to produce at the inquiry (Act 1895, s. 5 (2)). This warrant will, where necessary, be craved in the original petition, or in a subsequent petition narrating the facts. The crave must enumerate the articles or things which are to be taken possession of under the warrant. This section would not justify the arrest and detention of a ship; but in maritime accidents the procedure indicated may have to be used to secure productions before the departure of the vessel on board which the accident happened.

12. *Inspection of Locus*.—At or subsequent to presentation of the petition the Sheriff may inspect, either with or without the jury, or grant warrant for the inspection by any person he may deem expedient, of any premises, machinery, or other thing, the inspection of which is, or may, in his opinion, be material for the purposes of the inquiry (Act 1895, s. 5 (2)). This procedure is adopted by the Sheriff either *ex proprio motu* or on the application of the Procurator-Fiscal. Like that mentioned in the preceding paragraph, it may be useful for preserving evidence, where an accident has occurred on board a ship about to sail from the jurisdiction.

13. *Judicial Assistance*.—The Secretary for Scotland, in the event of his being satisfied that the Sheriff is unable, owing to the pressure of official duty, or other cause which the Secretary deems sufficient, to hold the inquiry, appoints a competent person, possessing the qualifications necessary for the office of Sheriff-Substi-



tute, to hold the inquiry in his stead. The person so appointed holds the inquiry, and has all the powers of a Sheriff under the Act, for the purposes of it (Act 1895, s. 4 (3)).

14. *Jury*.—The inquiry is held by the Sheriff and a jury selected from a list of ten common and five special jurors cited for each inquiry, or, if more inquiries than one are appointed by the Sheriff to be held on the same day, for all the inquiries to be held by him on that day (Act 1895, s. 4 (4)). This list of jurors is made up from the Sheriff Court Jury Book (*ibid.* s. 4 (10)); but it has to be observed that in an inquiry into the death of a person under the Act, neither the employer or employers of such person, nor any person or persons engaged under the same employers as such person, are competent jurors (*ibid.* s. 4 (6)).

The jurors are cited by the Sheriff Clerk in the manner provided by statute for the citation of jurors in civil cases in Scotland (*ibid.* s. 4 (10)). A *civil* jury being practically unknown in the Sheriff Court, the procedure as regards citation has to be borrowed from the Court of Session, where it is regulated by the 47th section of the Court of Session Act, 1868 (31 & 32 Vict. c. 100). The Sheriff Clerk or his Depute fills up and signs a citation addressed to each of ten common and five special jurors according to the address stated in the Sheriff Court Jury Book. The following will serve as an example:—

TO WILLIAM M'GREGOR,  
Farmer, New Mains,  
Glenmore.

*Juror's Citation: Sheriff Court*

Under the Fatal Accidents Inquiry (Scotland) Act, 1895, and the 47th section of the Court of Session Act,

1868, you are hereby cited to compear before the Sheriff of Blankshire, within the Sheriff Court House, County Buildings, Blankton, upon Thursday, the tenth day of December 1896 years, at eleven o'clock forenoon, there to pass upon all the public inquiries under the first-mentioned Act to be held that day; with certification that if you fail to attend you will be fined in terms of law.

CHAS. GRAHAM,  
*Sheriff Clerk of Blankshire.*

*Note.*—Certificates as to illness, exemption from age, etc., must be sent by post, with postage prepaid, addressed to—"The Sheriff Clerk of Blankshire, Sheriff Court House, Blankton."

Each citation is enclosed in an envelope, properly addressed to the juror, and the whole are taken to the post office and there registered. A list of jurors cited is made up, with a certificate by the Sheriff Clerk or his Depute annexed, in terms similar to the following:—

I, CHARLES GRAHAM, Sheriff Clerk of Blankshire, do hereby certify that I, in terms of the 4th section of the Fatal Accidents Inquiry (Scotland) Act, 1895, and of the 47th section of the Court of Session Act, 1868, lawfully summoned each of the persons named and designed in the foregoing list to compear before the Sheriff of Blankshire, within the Sheriff Court House, County Buildings, Blankton, upon Thursday, the tenth day of December 1896 years, at eleven o'clock forenoon, there to pass upon all the public inquiries under the first-mentioned Act to be held there that day; with certification that if they failed to attend they would be fined in terms of law. This I did upon the first day of December 1896 years, by delivering to the postmaster of Blankton, at the post office there, a citation to the effect foresaid signed by me for each of the foresaid persons in a registered letter (the postage and registration dues thereof being prepaid), addressed to him at his residence as appearing

in the said list, which is a copy of the Sheriff Court Jury Book for Blankshire; and evidence of which registration is subjoined to said list. Given under my hand, at Blankton, the first day of December 1896.

CHAS. GRAHAM,  
*Sheriff Clerk.*

The jury consists of five common and two special jurors, chosen from the list of persons cited in the manner already described (Act 1895, s. 4 (5)). The mode of selection is that prescribed by section 44 of the Court of Session Act, 1868 (*ibid.*). The Sheriff Clerk, at the time appointed for the inquiry, calls the list of jurors. Those who fail to answer to their names are liable to be fined as after mentioned. The jurors to pass upon the inquiry are chosen by ballot. The clerk, previous to the day appointed, causes the name and designation of each juror to be written on a separate piece of paper,—those of common jurors on white paper, those of special jurors on blue. All the pieces must be of the same size, and are rolled up as nearly as may be in the same shape. Those bearing the names of common jurors are put into one box or glass; those bearing the names of special jurors into another. The contents of each vessel are thoroughly mixed. The clerk in open Court draws out the pieces of paper one by one, and reads aloud the name upon each as he does so. It is convenient to draw the two special jurors first, and then the five common. The jurors take their places in the jury-box as their names are called. If any of the persons whose names are drawn do not appear, or are objected to as after mentioned, and the objection is sustained, then other papers, common or special as the case may be, are drawn until the number necessary for the inquiry is made out. The persons drawn and appearing are the jury in all the inquiries held on the same day.

The statutory provisions now in force in regard to challenges of jurors in civil and criminal cases in Scotland do not apply to inquiries under the Act; but any person interested in the inquiry may state to the Sheriff any objection which he has to a person balloted to serve on the jury; and if the Sheriff considers that sufficient cause has been shown why such person should not so serve, he does not allow him to do so (Act 1895, s. 4 (6)). The statutory objection to employers and fellow workmen has been noticed already (p. 36).

The existing statutory provisions relative to fines for non-attendance of jurors apply to inquiries under the Act (Act 1895, s. 4 (10)). If a juror fails to answer to his name, after being openly called three times if a special juror, or being a common juror his name has been drawn, and no reasonable excuse is established on behalf of the absentee, he is liable, upon proof by oath of a credible person that he has been properly cited, to a penalty of from £2 to £5 as the Court may direct (55 Geo. III. c. 42, s. 22). The following are sufficient excuses :—

(a) *Illness*, proved by a medical certificate on soul and conscience that the juror is unable to attend;

(b) *Age exceeding sixty years*, proved by a certificate;

(c) *Exemption from service* under any Act of Parliament; and

(d) *Incompetency* under this Act (p. 36).

The necessary certificates of illness or age must be sent to the Sheriff Clerk previous to the inquiry. The principal classes exempted from service by Acts of Parliament are—

- (1) Advocates, solicitors, and procurators in practice (6 Geo. IV. c. 22, s. 2);



- (2) Clerks and other officers of any Court (*ibid.*);
- (3) Jailers, messengers-at-arms, and officers of the law (*ibid.*);
- (4) Medical practitioners in actual practice (*ibid.*);
- (5) Ministers of Established and other Churches (*ibid.*);
- (6) Officers of the Army and Navy on full pay (*ibid.*);
- (7) Officers of Customs and Excise on full pay (*ibid.*);
- (8) Peers, judges, Sheriffs, and burgh magistrates (*ibid.*);
- (9) Commissioners of Income Tax (43 & 44 Vict. c. 19, s. 40);
- (10) Police officers (20 & 21 Vict. c. 72, s. 18);
- (11) University professors and parochial schoolmasters (6 Geo. IV. c. 22, s. 2);
- (12) Lighthouse keepers (32 & 33 Vict. c. 36);
- (13) Soldiers of Her Majesty's regular forces (44 & 45 Vict. c. 58, s. 147); and
- (14) Dentists, if registered and if they desire exemption (41 & 42 Vict. c. 33, s. 30).

The existing statutory provisions relative to the swearing of jurors apply to inquiries under the Act (Act 1895, s. 4 (10)). After the jury have taken their places in the box, the clerk calls over their names. As they answer they stand and remain standing. The clerk reads the petition, and then administers the oath. If any juror objects to be sworn, and states as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, he is permitted to make a solemn affirmation (51 & 52 Vict. c. 46). Two forms of oath appear to be in use,—one the ordinary oath administered to criminal jurors, the other that administered to civil



jurors under the Act 55 Geo. III. c. 42, s. 31. As the whole provisions of the statute of 1895 show that the jury is deemed to be a *civil* one, it is probable that the latter oath is intended to be used ; but forms of both oaths and relative declarations are here given, as the point does not appear to have been settled :—

(1) *Civil Juror's Oath*

You swear by God, and as you shall answer to God at the great Day of Judgment, that you shall well and truly try this inquiry, and a true verdict give according to the evidence.

(2) *Criminal Juror's Oath*

You seven swear by Almighty God, and as you shall answer to God at the great Day of Judgment, that you will truth say and no truth conceal in so far as you are to pass on this inquiry.

(3) *Juror's Declaration*

I, Peter Taylor, do solemnly, sincerely, and truly declare and affirm that I will (*here continue as in either of above forms*).

After the oath is administered the jurors sit down, the clerk records in the proceedings their names and addresses as appearing on the slips, and the examination of witnesses begins.

15. *Procedure at Inquiry*.—The inquiry must be open to the public. The Procurator-Fiscal, or (in the event of his being unable to attend personally from any cause stated in open Court, and held by the Sheriff to be sufficient) his duly qualified Depute, adduces evidence, including such medical or skilled evidence as he deems expedient, in regard to the cause or causes of the death or deaths and the circumstances of the accident (Act 1895, s. 5 (1)). This evidence he will

have collected in the preliminary precognition, and nothing need be added to what has been already said as to its character (p. 24).

It is competent—

- (a) to the wife or husband and the relatives of any person who has lost his life in the accident ;
- (b) to the employer or employers of such person ;
- (c) in the case of an accident in or about a mine, to an inspector of mines, and in the case of an accident in a factory or workshop, to an inspector of factories or workshops ;
- (d) to any person or persons engaged under the same employers as such person ; and
- (e) to any other person or persons whom the Sheriff may consider to have a just interest in the inquiry,—

to appear at, take part in, and adduce evidence at, such inquiry, either by themselves or by counsel or agents, or by any other person or persons whom the Sheriff may allow to appear on their behalf (Act 1895, s. 5 (3)). The names of all parties or agents who appear are recorded by the Sheriff Clerk.

In the event of the Sheriff being moved to adjourn the inquiry for the hearing of further evidence, for an inspection of the *locus*, or for any other necessary purpose, he can exercise the power inherent to all tribunals of adjourning the diet to a specified time and place. The interlocutor of adjournment is written upon the record of procedure, and signed by the Sheriff.

Two special provisions of the Act must be kept in view during the examination of witnesses—(1) the examination of any person as a witness or haver at the inquiry is not a bar to criminal proceedings being afterwards taken against such person (Act 1895, s. 5 (4)); and (2) no witness at such inquiry is compellable

to answer any question tending to show that he is guilty of any crime or offence (*ibid.*).

The evidence adduced is taken on oath, the witnesses are subjected to cross-examination, and the inquiry is conducted as nearly as possible in accordance with the ordinary procedure in a trial by jury before the Sheriff Court (Act 1895, s. 5 (4)). It is unnecessary to describe that procedure here, but for convenience we shall note the form of oath administered to each witness :—

I swear by Almighty God, and as I shall answer to God at the great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth.

The rules as to the substitution of a declaration for an oath are the same as in the case of jurors (p. 40). The evidence is taken down in writing under the control and supervision of the Sheriff, and as he directs, either at length or in shorthand, which is afterwards written out, and in either case it is duly authenticated as correct (Act 1895, s. 5 (4)). Although the Act does not say so, the Sheriff ought to dictate the evidence to the shorthand writer. The notes of evidence may be recorded in the following manner :—

Evidence in public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, in regard to the death of William Thomson, engine-driver, 36 High Street, Blankton, held within the Sheriff Court House, County Buildings, Blankton, on the tenth day of December 1896, in presence of Ralph Abercrombie, Esquire, Sheriff-Substitute of Blankshire.

Compeared John Smith, Procurator - Fiscal of Blankshire, for the public interest; Mary Thomson, 36 High Street, Blankton, the widow of the deceased; and Robert Inglis, millowner, Blankton, the employer of the deceased.

*Arthur Smith*, interrogated by the Procurator Fiscal, depones—I am a fireman. I reside at 4 Scott Street, Blankton. I am thirty-five years of age [*and so on*].

I, Thomas Anderson, shorthand writer, Blankton, do hereby certify that the notes of evidence in this inquiry were dictated to me by the Sheriff-Substitute; that they were first taken in shorthand and afterwards extended by me; that the foregoing eight pages are the extended notes of the evidence; and that the same are correct.

THOS. ANDERSON.

As the Procurator-Fiscal and each party appearing finishes the examination of the witnesses adduced by him, he declares his evidence closed. At the conclusion of the whole evidence the Procurator-Fiscal and others are, if they so desire, heard upon it (Act 1895, s. 4 (7)). Thereafter the Sheriff sums up the evidence, if he considers such summing up necessary, and the jury retire to adjust their verdict (*ibid.*).

The following example illustrates the procedure at a public inquiry. It is in this instance supposed that the record has been written at the end of the petition, and upon sheets attached to it, which is the more convenient method. It is, however, competent to keep the record separate; but in that case the preamble must contain a narrative of the time, place, and circumstances of the accident and death, as set forth in the petition:—

At Blankton, and within the Sheriff Court House, County Buildings there, the tenth day of December 1896 years, at a public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, in regard to the death of William Thomson, engine-driver, 36 High Street, Blankton, which occurred under the circumstances particularly set forth in the foregoing



petition,—In presence of Ralph Abercrombie, Esquire, Sheriff-Substitute of Blankshire,—Compeared John Smith, Procurator-Fiscal of Blankshire, for the public interest; Mary Thomson, 36 High Street, Blankton, the widow of the deceased; and Robert Inglis, mill-owner, Blankton, the employer of the deceased.

The following seven jurors were balloted to pass upon the inquiry, viz. :—

*1st. Special*

1. William Brown, banker, Lynburgh.
2. William M'Gregor, farmer, New Mains, Glenmore.

*2nd. Common*

1. Donald Cunningham, gardener, Blankton.
2. Roderick Mann, shepherd, Cothill, Lynmouth.
3. Alexander Ross, carpenter, Blankton.
4. James George, mason, Lynburgh.
5. Hector Rose, blacksmith, Blankton.

The clerk of Court having read to the jury the foregoing petition setting forth the circumstances of the death in question, they were lawfully sworn without objections.

The Clerk of Court produced—

1. Letter from the Procurator-Fiscal of Blankshire, intimating the names and addresses of the wife and employer of the deceased.
2. *Blankton Gazette*, 4th December 1896.
3. *Lynmouth Courier*, 2nd December 1896.
4. Medical Report by George Smith, M.D., Lynmouth, dated 30th November 1896.

The Sheriff-Substitute directed that the evidence to be adduced at this inquiry should be taken in shorthand, and Thomas Anderson, shorthand-writer, Blankton, was duly sworn as shorthand writer.

THOS. ANDERSON.

RALPH ABERCROMBIE.



The following witnesses were adduced, sworn, and examined by the Procurator-Fiscal in regard to the cause of the death, and the circumstances of the accident, viz. :—

1. Arthur Smith, fireman, 4 Scott Street, Blankton.
2. John Mitchell, road-surfaceman, Muirside.
3. George Smith, M.D., Lynmouth.

The Procurator-Fiscal declared the evidence adduced by him in this inquiry closed.

The following witnesses were adduced, sworn, and examined by the said Robert Inglis, viz. :—

1. Andrew Adam, labourer, 29 High Street, Blankton.
2. John Wilson, farmer, Muirtown, Glenavon.

The said Robert Inglis declared the evidence adduced by him in this inquiry closed.

No other evidence was adduced, and neither party addressed the jury.

The Sheriff-Substitute addressed the jury on the evidence led before them.

16. *Verdict*.—The jury return a verdict setting forth (so far as such particulars have been proved)

- (a) when and where the accident took place ;
- (b) when and where the death or deaths to which the inquiry relates took place ; and
- (c) the cause or causes of such death or deaths (Act 1895, s. 4 (7)).

They can return a verdict by a majority of their number at any time not less than one hour after they have been enclosed (*ibid.* s. 4 (8)). The verdict returned is recorded in the Sheriff Court books (*ibid.* s. 5 (5)). Such a verdict is not competent to be given in evidence, or to be founded on, in any subsequent

judicial proceeding, civil or criminal, arising out of the same accident (*ibid.* s. 6).

When one studies the foregoing statutory provisions, a series of questions suggest themselves. What is the "cause of death" which the jury have to set forth in their verdict? Is it merely the cause from a medical point of view,—fracture of the skull, shock, internal hæmorrhage? Or, may they find the agency which induced the cause of death in its medical aspect? Or, may they seek for and declare the moral or legal delinquency—the negligence, carelessness, or recklessness—which is to blame for the entire sequence of causes? These are very natural and very serious questions, and call for careful consideration. We have already discussed in our preliminary chapter (p. 5) the varied meaning of the word "cause" when applied to an accident or a death, and the difficulties, and sometimes insuperable obstacles, which may bar the way to discovery of the ultimate cause. It is unnecessary to recapitulate the remarks made in that chapter; but it will simplify our consideration of the matter here, if we say that it is generally conceded that the term includes both the cause of death from a medical point of view, and also that cause as resulting from, and being connected with, the accident. Difficulty arises on the question whether the jury are entitled to express an opinion that the ultimate cause of the accident was insufficiency of plant, defective machinery or appliances, failure to observe regulations, carelessness, recklessness, neglect, or fault on the part of a general class or of a named individual.

It has been urged that if the jury are not permitted to add such an expression of opinion, the inquiry becomes a farce,—a mere beating of the air for no practical purpose. Stress is laid upon the use

of the plural—"causes of death"—as recognising the possibility of several causes, and as requiring the jury to trace the chain of causation to its remotest link, and place the blame of the accident upon responsible shoulders. If those who thus argue are right in their assumption that the public inquiry under the Act was designed to attain that end, and to bring home to the responsible party blame for the occurrence, there is force in both these arguments. But we are not satisfied that the Act had any such design, and it is obvious that if it had, the machinery which it provides is totally unsuited for the purpose.

It needs a criminal jury of *fifteen* to find a man guilty of culpable recklessness, and a civil jury of *twelve* to find him liable in reparation for injuries sustained through his fault. Is it probable that the Legislature would empower a jury of *seven* to bring in a verdict ascribing fault to any individual, when such ascription would almost of necessity lead to *both* a criminal and a civil trial? It is idle to say that the Act guards against the use of the verdict in ulterior proceedings. The statutory reservation cannot do away with the probability that, if the jury in a fatal accident inquiry find that the death was due to the fault of a named individual, that person will be placed upon his trial for culpable homicide, and sued in the civil Court for damages; while, at the very least, he will be morally branded for life as a man who has culpably caused the death of a fellow creature. He can only clear himself from that stigma by standing his trial, and obtaining a verdict of acquittal from a criminal or civil jury.

The intimation given to those who may be found responsible is utterly inadequate, if all concerned are in this manner to be virtually placed upon trial. It has been well said that, if the jury have power to find individual blame, then every person interested in the

conduct of the work, in the course of which the fatal accident occurred, will have to get notice that fault is alleged against him, that he may be prepared to meet the charge (*Scottish Law Review*, vol. xii. p. 113). As matters stand, some of the witnesses in the course of cross-examination may give evidence tending to establish fault on the part of an absent person, and the jury (if they have the power) may find that individual to blame for the accident; whereas, had he been present, and prepared to lead evidence, he could have shown that he was perfectly innocent.

The most distinct indication, however, of the object of the Act, and of the proper use of the verdict, is found in the provision quoted above,—that the verdict is not to be given in evidence, or founded on, in subsequent judicial proceedings, civil or criminal. This enactment renders an expression of the jury's opinion as to fault perfectly futile for any beneficial purpose, while it leaves unaffected all its pernicious effects above alluded to. It may be replied by some that this provision is a mistake, and ought to be eliminated from the Act; yet, properly regarded, it is a very valuable one, and indicates more clearly than any other part of the statute the beneficent design which the Legislature had in view. That design was *not* the finding of fault. Other machinery is provided to ensure that if there is fault, criminal or civil, the offender shall not escape the consequences. The enactments prescribing that copies of the proceedings are to be furnished to Crown counsel, Her Majesty's Inspectors of Mines and Factories, and to every person interested, amply safeguard the ends of justice. We may feel confident that these ends will be attained far more surely through the deliberate action of responsible officials, and of those personally interested in the result of the accident, than by the hasty verdict of a jury of seven, returned on a



presentation of facts which may be incomplete. The design of the Act is *not* to obtain such a verdict, but to elicit in public a full statement of the facts,—a pre-cognition upon oath of all who can throw light upon the occurrence. By leading that evidence before the Sheriff and a jury, with cross-examination and re-examination, every facility is given for sifting the truth of the witnesses' statements, and arriving at a full knowledge of the circumstances of the accident. All that is necessary to complete the procedure is a verdict setting forth the opinion of the jury as to whether the death was due to the accident or to some other cause.

A few words in conclusion may be devoted to the argument based on the use of the plural "causes of the death." That argument, if not totally destroyed, is weakened by the fact that the words of the passage, "the cause or causes of such death or deaths," may with equal propriety be deemed to be a euphonic abbreviation for "the cause of such death, or the causes of such deaths." Either reading may be justified, and, therefore, no weight can be given to the words as an argument one way or another.

For these reasons we are of opinion (but, of course, we do not make a dogmatic assertion on a point as to which there is room for reasonable doubt) that the verdict of the jury ought to contain three findings and no more,—

- (1) that an accident happened to the deceased on a certain day and hour, at a certain spot, and in a certain manner ;
- (2) that the deceased died on a certain day and hour, at a certain place ; and
- (3) that the cause of his death was a certain bodily injury, and that such injury was, or was not, due to the accident.



Our meaning will be better understood after a perusal of the following form of verdict:—

The jury unanimously find that William Thomson, within designed, at three o'clock in the afternoon of 28th November 1896, in the course of his employment as an engine-driver in the service of Robert Inglis, millowner, Blankton, driving a steam traction engine on the public road leading from Blankton to Lynmouth, and at a part thereof in Glenavon Parish, Blankshire, opposite the steading at Muirside Farm, accidentally fell off the said engine while it was in motion, and one of the wheels thereof passed over his legs; further find that the said William Thomson died at six o'clock in the afternoon of 29th November 1896, within the hospital at Lynmouth, Glenavon Parish, aforesaid; and further find that the cause of his death was shock, the result of injuries sustained by him in the said accident.

RALPH ABERCROMBIE.

If the jury wish to make a recommendation as to the use of certain precautions or safeguards, there seems to be no harm in their verbally expressing their views through their chancellor; but as the statute imposes upon them no duty in the matter, it is not desirable that any such recommendation should be added to the formal verdict which is recorded in the Court books. In describing the accident it is sufficient to use general terms. The details being in the recorded evidence, Crown counsel, Her Majesty's Inspectors, and all parties interested may there ascertain the particulars, and form a decided opinion as to whether any person is to blame, criminally or civilly, for what has happened, and, if so, what proceedings ought to ensue. The jury only find such facts as are proved to their satisfaction, and consequently, if no evidence has been led upon any of the points above mentioned, or if the jury split into sections regarding any of them, and no

section has a majority, that point will be omitted as unascertained. They find the facts *as proved* without reference to the statements in the petition, which may occasionally be based upon an erroneous idea of the occurrence. Its purpose is merely to start the inquiry, and the jury are not in anyway bound by its terms. If, therefore, they are satisfied that the accident or death occurred at a different time or place, even in a different jurisdiction, from that stated in the petition, they return a verdict setting forth the truth as ascertained by them. Questions of jurisdiction have not the importance in a public inquiry that they have in a criminal trial, for the very obvious reason that a criminal Court has no power to try a person charged with crime unless it has jurisdiction over him; whereas at a public inquiry no person is accused, and it is a matter of indifference within what jurisdiction the facts are ascertained, so long as they are ascertained truthfully, and the accident occurred *within Scotland*. If the jury in a Border county found that the accident happened across the Border, it might be a different question, as the Act does not extend to England, but we shall leave that point to be considered by the Sheriff before whom it first arises.

17. *Payment of Jurors and Witnesses.*—Each juror empanelled at an inquiry under the Act is entitled to remuneration at the rate of five shillings for each day, or part of a day, during which he has served as a juror, and travelling expenses. Such remuneration is payable by the Sheriff Clerk, and is recoverable by him (1) from the county council as a charge upon the general purposes rate, where the inquiry relates to a death from an accident which has taken place in a county, including any police burgh therein; and (2) from the burgh commissioners

or other municipal authority of a Royal or parliamentary burgh as a charge upon the burgh general assessment, or, where there is no burgh general assessment, upon the police assessment, where the inquiry relates to a death from an accident which has taken place in a burgh (Act 1895, s. 4 (9)). It will be observed that it is only jurors empanelled who are paid. Jurors cited, but not called to serve on the jury, have to pay their own expenses. To save delay the Sheriff Clerk may after the ballot set aside in an envelope the amount payable to each juror, and hand it to him at the close of the inquiry, taking a receipt for the amount.

Every person attending the inquiry as a witness or haver on citation by the Procurator-Fiscal is allowed such expenses as are paid to any person attending a criminal trial by jury in the Sheriff Court on such citation (Act 1895, s. 5 (6)). These allowances are regulated by the Schedule of the Rates of Payment to Witnesses in Reported Criminal Cases in Scotland, approved in Exchequer, December 1862. No provision is made for the payment of witnesses cited by any person other than the Procurator-Fiscal. These will probably, failing arrangement, have to be paid according to the scale of fees in ordinary actions in the Sheriff Court.

18. *Report to Crown Office.*—At the conclusion of the inquiry the Procurator-Fiscal obtains from the Sheriff Clerk,—

- (a) a copy of the petition ;
- (b) the recorded evidence of the witnesses, or a copy thereof ;
- (c) any reports or productions which may have been made in the course of the inquiry,

or copies thereof, in so far as the same are in writing; and

(d) a copy of the verdict.

These he transmits, together with the usual schedule for the registrar of deaths, to the Crown Agent (Act 1895, s. 5 (5)). Along with the papers he sends a letter or report in terms of instructions issued from the Crown Office.

19. *Report to Her Majesty's Inspectors.*—At the conclusion of the inquiry, the Sheriff Clerk transmits copies of the petition, of the recorded evidence, and of any reports which may have been made, in the case of an accident in or about a mine, to the Inspector of Mines for the district, and in the case of an accident in a factory or workshop, to the Inspector of Factories and Workshops for the district (Act 1895, s. 5 (5)). In practice these documents are only furnished when asked for by the inspectors. It is proper that a copy of the verdict should also be supplied. These papers enable the inspectors to judge whether further proceedings are requisite, and bring under their notice any failure of duty on the part of those responsible for the management of the mine or factory. For the meanings of the terms "mine" and "factory," reference is made to Chaps. IV. and V.

20. *Copies for Persons interested.*—Copies are also obtainable by any person having an interest in the inquiry, upon such reasonable payment to defray the cost thereof as the Sheriff shall fix (Act 1895, s. 5 (5)). The charge for these copies is fixed at one shilling per sheet, unless the Sheriff shall otherwise determine (Act of Sederunt, 21st November 1895). If the cost is to be further reduced, the



person who wishes to have the copies ought, at the close of the public inquiry, to ask the Sheriff to fix a reasonable sum for payment of them.

21. *Savings as to existing Procedure.*—Nothing in the Act alters or affects the existing law and practice—(1) relative to the duties of Procurators-Fiscal to inquire and report to the Crown Agent in regard to cases of death from accident; or (2) relative to any powers at present vested in the Lord Advocate to cause public inquiries to be held; or (3) the existing law or practice with reference to criminal proceedings against any person or persons criminally responsible for any death (Act 1895, s. 6). Some of these matters have already been alluded to, and the powers of ordering public inquiries and investigations under special Acts of Parliament will come under our notice in subsequent chapters.

22. *Deaths after Inquiry.*—After the inquiry in regard to the deaths of the first victims of an accident, one or more of the injured men may die. Probably the more prudent course is to avoid such a question by delaying the public inquiry into the circumstances of a disaster until the victims are either dead or out of danger. The evidence is preserved by the preliminary precognition, and it is better that the full measure of the mischief caused by the accident should be disclosed when the circumstances are laid before the jury. At all events, the facts having been once settled, there can be no reason for going over the evidence afresh, simply because there is one more victim. Of course, if the circumstances of the subsequent death differ from those previously investigated, another inquiry into the facts of the occurrence, so far as they relate to that death, will be absolutely necessary.



## CHAPTER IV

### OF ACCIDENTS IN MINES AND QUARRIES

1. *Statutes regulating Procedure.*—The principal statutes which govern investigations in regard to the various explosions and accidents enumerated in this chapter are:—The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), and the Quarries Act, 1894 (57 & 58 Vict. c. 42). For brevity we shall refer to these statutes throughout the chapter as “Act 1887,” “Act 1872,” and “Act 1894” respectively. Certain works *above ground* connected with a metalliferous mine (par. 2), or *outside* a quarry, constitute “factories” or “workshops” within the meaning of the Factory Acts, and reference must be made to Chap. V. for the procedure respecting these; and, further, accidents from explosive substances fall within the scope of the Explosives Act, which forms the subject of Chap. VI., while those from boiler explosions are dealt with in Chap. IX. In addition to what is said in Chap. VI. on the use of explosives, attention must be paid to the provisions in that respect of the Coal Mines Regulation Act, 1896, and an Order made by the Home Secretary under that statute, of date 19th December 1896, neither of which, however, affects the methods of inquiry now to be described.

2. *Mines and Quarries*.—A “mine” in the sense of the Coal Mines Regulation Act, 1887, is—

- (a) a mine of coal.
- (b) a mine of stratified ironstone ;
- (c) a mine of shale ; and
- (d) a mine of fireclay (Act 1887, s. 3).

Every other mine of whatever description is a “metalliferous mine” within the meaning of the Metalliferous Mines Regulation Act, 1872 (Act 1872, s. 3). A “quarry” under the Quarries Act, 1894, is every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep (Act 1894, s. 1). The terms “mine,” “metalliferous mine,” and “quarry” are used with these significations throughout this chapter.

3. *Notice of Accident*.—When there occurs loss of life or serious personal injury to any person employed in or about—

- 1st, a mine, *whether above or below ground* ;
- 2nd, a metalliferous mine, *below ground* ; or
- 3rd, a quarry, *inside the pit, hole, or excavation*,  
—by reason of

- (a) any accident whatever ;
- (b) an explosion of gas ;
- (c) an explosion of any explosive substance ; or
- (d) an explosion of a steam boiler—

the owner, agent, or manager of such mine, metalliferous mine, or quarry, must send notice in writing to H.M. Inspector of Mines for the district on behalf of the Lord Advocate (Act 1887, ss. 35 and 76 ; Act 1872, ss. 11 and 42 ; Act 1894, s. 2). This notice must be sent within twenty-four hours next after the

explosion or accident (*ibid.*). It is desirable that a telegram should, in serious cases, be despatched forthwith to the inspector (who will refund the cost), full particulars being forwarded afterwards by post. A form of notice is issued by the Home Office, of which a copy will be found in the Appendix (No. 5). It sets forth—

- (a) Name of mine or quarry, and county in which it is situated ;
- (b) Name and postal address of owner or occupier ;
- (c) Name, occupation, and age of each person killed or injured ;
- (d) Date and hour of accident ;
- (e) Place of accident ;
- (f) Cause and description of accident ; and
- (g) Nature of injury.

In the case of an accident *above ground* at a metalliferous mine, and at works *outside* a quarry the notice also states—

- (h) Residence of injured person, and
- (i) Place to which he has been removed.

If the personal injury results in death, notice in writing of the death must be sent to the inspector within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager (*ibid.*).

Failure to give notice makes the person failing guilty of an offence involving a heavy fine (*ibid.*). When a fine is imposed for neglecting to send either of the above notices, the Home Secretary may (if he thinks fit) direct such fine to be paid to, or distributed among, the persons injured and the relatives of those killed by the explosion or accident, or among some of them ; provided that such persons did not occasion, or contribute to occasion, the occurrence (Act 1887, s. 70 ; Act 1872, s. 38 ; Act 1894, s. 2). The words

“owner” and “agent” in this paragraph have the meanings assigned to them in the statutes (Act 1887, s. 75 ; Act 1872, s. 41 ; Act 1894, s. 2).

In the case of accidents happening *above ground* in a metalliferous mine, or *outside* a quarry, although these are dealt with under the provisions of the Factory and Workshop Acts, notice is sent on the same form and to the same inspectors as in the case of other mining accidents. The premises where such accidents occur must be connected with the metalliferous mine or quarry, be situated within a mile of it, and belong to the same owner. A further notice in respect to these accidents, when required by the Factory Acts, is sent to the “certifying surgeon” (see Chap. V.).

As great promptitude ought to be observed in transmitting notices, it will be convenient to insert here a list of the districts into which Scotland is divided, and the names and addresses of the inspectors who act within each of these districts :—

## 1. LIST OF H.M. INSPECTORS UNDER COAL MINES ACT

| No. of District. | Names of Districts.                                                                                                                                                                                                                                                                                                             | Names, Addresses, and Dates of Appointments of Inspectors of Districts.                                   | Names, Addresses, and Dates of Appointments of Assistant Inspectors.                                                                                        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                | SCOTLAND, EAST DISTRICT, comprising counties of Aberdeen, Banff, Berwick, Caithness, Clackmannan, Cromarty, Edinburgh, Fife, Forfar, Haddington, Inverness, Kincardine, Kinross, Linlithgow, Moray or Elgin, Nairn, Orkney and Shetland, Peebles, Perth, Ross, Roxburgh, Selkirk, Sutherland, and parts of Lanark and Stirling. | J. B. Atkinson, Esq.,<br>10 Foremount Terrace, Glasgow.<br>20th March 1873,<br>promoted 1st January 1889. | R. M'Laren, Esq.,<br>Uddingston, Glasgow.<br>31st March 1885.<br><br>H. Johnstone, Esq.,<br>77 Montgomerie Street, Kelvinside, Glasgow.<br>15th March 1887. |



| No. of District. | Names of Districts.                                                                                                                                      | Names, Addresses, and Dates of Appointments of Inspectors of Districts.                           | Names, Addresses, and Dates of Appointments of Assistant Inspectors.                                                                                       |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2                | SCOTLAND, WEST DISTRICT, comprising counties of Argyle, Ayr, Dumfries, Dumbar-ton, Kirkcudbright, Renfrew, Wigtown, and portions of Lanark and Stirling. | J. M. Ronaldson, Esq., 44 Athole Gardens, Glasgow. 1st February 1875, promoted 27th January 1886. | T. H. Mottram, Esq., 6 Kelvinside Gardens, N. Glasgow. 4th April 1889.<br><br>Andrew Pearson, Esq., Stonelaw Cottage, Rutherglen, Glasgow. 9th March 1892. |

## 2. LIST OF H.M. INSPECTORS UNDER METALLIFEROUS MINES ACT

| No. of District. | Names of Districts.                                                                                                                                                                                                                                                                                                             | Inspectors.                                                                                       | Assistant Inspectors.                                                                                                                                      |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                | SCOTLAND, EAST DISTRICT, comprising counties of Aberdeen, Banff, Berwick, Caithness, Clackmannan, Cromarty, Edinburgh, Fife, Forfar, Haddington, Inverness, Kincardine, Kinross, Linlithgow, Moray or Elgin, Nairn, Orkney and Shetland, Peebles, Perth, Ross, Roxburgh, Selkirk, Sutherland, and parts of Lanark and Stirling. | J. B. Atkinson, Esq., 10 Foremount Terrace, Glasgow. 20th March 1873, promoted 1st January 1889.  | R. M'Laren, Esq., Uddingston, Glasgow. 31st March 1885.<br><br>H. Johnstone, Esq., 77 Montgomerie Street, Kelvinside, Glasgow. 15th March 1887.            |
| 2                | SCOTLAND, WEST DISTRICT, comprising counties of Argyle, Ayr, Dumfries, Dumbar-ton, Kirkcudbright, Renfrew, Wigtown, and portions of Lanark and Stirling.                                                                                                                                                                        | J. M. Ronaldson, Esq., 44 Athole Gardens, Glasgow. 1st February 1875, promoted 27th January 1886. | T. H. Mottram, Esq., 6 Kelvinside Gardens, N. Glasgow. 4th April 1889.<br><br>Andrew Pearson, Esq., Stonelaw Cottage, Rutherglen, Glasgow. 9th March 1892. |

*Note.*—The Inspectors under the Metalliferous Mines Act are Inspectors of Quarries under the Quarries Act, 1894.

4. *Inquiry by Procurator-Fiscal.*—When a serious accident or explosion in a mine, metalliferous mine, or



quarry is reported to the Procurator-Fiscal, he ought at once to communicate by telegraph with the Inspector of Mines for the district at the address which we have given above. Thereafter, if no death, or the death of a person *not* engaged in an industrial employment or occupation, has resulted, he follows the procedure indicated in Chap. II.

It has to be borne in mind that in all inquiries regarding mining accidents the Procurator-Fiscal and the Inspector of Mines for the district act for the public interest and assist one another. Each should at once inform the other of every accident which comes to his knowledge, and, while the Procurator-Fiscal precognosces the witnesses and elicits the facts, the inspector supplies information upon technical points. The former may advise the latter as to the facts, but the precognition is confidential, and must not be shown. When the death of a person engaged in an industrial employment or occupation has resulted from the occurrence, a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895, must be held (see Chap. III.). The Procurator-Fiscal conducts this inquiry as usual; but the Inspector of Mines may appear at, take part in, and adduce evidence at it (58 & 59 Vict. c. 36, s. 5 (3)). It is proper that the inspector should deal with technical points only; *e.g.* the observance or failure to observe the general or special statutory rules. The Procurator-Fiscal may call the inspector or his assistant as expert witnesses when such evidence is required, or where either can prove material facts which cannot be established by other evidence. Other expert evidence is called in special cases by authority of the Lord Advocate. At public inquiries of this sort, the jury are sometimes desirous of adding to the verdict an expression of opinion that the occurrence is attribut-

able to fault on the part of the owner or manager, insufficiency of plant, or the like. The remarks on this subject in Chap. III. p. 47, may be referred to. The point is one of considerable importance, and it is eminently desirable that the Sheriff should carefully weigh the arguments for and against such an expression of opinion, in order that he may be able to guide the jury in conformity with the principles of strict justice.

5. *Inquiry by Inspector.*—When an accident or explosion in a mine, metalliferous mine, or quarry has caused loss of life or personal injury, the Home Secretary may direct an Inspector of Mines to make a special report with respect to the occurrence (Act 1887, s. 44 ; Act 1872, s. 20 ; Act 1894, s. 2). For that purpose the inspector has power—

- (a) to make examination and inquiry as to whether the statutory provisions relating to matters above or below ground are being complied with ;
- (b) to enter, inspect, and examine any mine and every part of it at all reasonable times by day and night ;
- (c) to examine into and make inquiry respecting the state of the mine, its ventilation, the sufficiency of the special rules, and everything connected with the safety of the persons employed, or the care of the horses and other animals used in the mine ;
- (d) to exercise such other powers as may be necessary for carrying the Act into effect (Act 1887, s. 41 ; Act 1872, s. 17 ; Act 1894, s. 2).

6. *Formal Investigation.*—When an accident or explosion happens in or about a mine, within the meaning of the Coal Mines Regulation Act, 1887,

the Home Secretary, after communicating with the Lord Advocate, may direct a formal investigation to be held if it appears to him expedient to do so (Act 1887, s. 45). In that event he appoints a competent person to hold the investigation, and if he thinks fit one or more persons possessing legal or special knowledge to act as assessors (*ibid.* s. 45 (1)). Where a legal assessor is required, the Lord Advocate in consultation with the Home Secretary nominates him. The tribunal thus constituted is called "the Court" (*ibid.* s. 45 (2)). The investigation is held in open Court, in such manner and under such conditions as the Court think most effectual for ascertaining the causes and circumstances of the explosion or accident, and for enabling them to make the report after mentioned (*ibid.*). In Scotland the Court have, for the purpose of the investigation—(1) all the powers of a Sheriff when acting as a Court in hearing complaints for offences against the Act (*ibid.* ss. 45 (3) and 67); (2) all the powers of an Inspector of Mines (*ibid.*); and (3), in addition, power—

- (a) to enter and inspect any place or building, the entry or inspection of which appears to them to be requisite;
  - (b) to require by summons, signed by the Court, the attendance of all such persons as they think fit to call before them and examine;
  - (c) to require answers or returns to such inquiries as they think fit to make;
  - (d) to require the production of all books, papers, and documents which they consider important;
  - (e) to administer an oath; and
  - (f) to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination
- (Act 1887, s. 45 (3)). Any person who, without reason-

able excuse (proof whereof lies on him) either (a) fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with a summons or requisition of the Court; or (b) prevents or impedes the Court in the execution of their duty,—is for every offence liable to a fine not exceeding £10 (*ibid.* s. 45 (7)). In case of failure to comply with a requisition to make a return or produce a document, he is liable to a fine not exceeding £10 for every day that such failure continues (*ibid.*). All expenses incurred in and about an investigation (including the remuneration of any person appointed to act as assessor) are deemed to be part of the expenses of the Home Secretary in the execution of the Act (Act 1887, s. 45 (6)). Persons attending as witnesses before a Court of investigation are, in Scotland, allowed such expenses as would be allowed to witnesses attending on citation the Court of Justiciary (Act 1887, ss. 45 (4) and 76). In case of dispute as to the amount to be allowed, the question is referred by the Court to the auditor of the Sheriff Court of the county or district where the inquiry takes place, who, on request signed by the Court, ascertains and certifies the proper amount of the expenses (*ibid.*). The Court of investigation make a report to the Secretary of State setting forth—

- (a) the causes of the explosion or accident;
- (b) its circumstances; and
- (c) any observations which the Court think right to make (Act 1887, s. 45 (5)).

The Secretary may cause the special report of an inspector, or report of a Court, to be made public at such time and in such manner as he may think fit (*ibid.* s. 46; Act 1872, s. 20; Act 1894, s. 2). The proceedings are conducted on the same general lines as formal investigations in regard to boiler explosions, fully illustrated in Chap. IX.



## CHAPTER V

### OF ACCIDENTS IN FACTORIES AND WORKSHOPS

1. *Statutes regulating Procedure*.—The procedure in regard to accidents in those industrial employments which form the subject of this chapter is regulated by the Factory and Workshop Act, 1878 (41 Vict. c. 16); Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), and Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37). For brevity we shall, throughout this chapter, refer to these statutes as “Act 1878,” “Act 1891,” and “Act 1895” respectively. In the application of the Acts to works at quarries and metalliferous mines, important modifications are introduced by the statutes dealing with those premises, an account of which has been given in Chap. IV., and the special accidents which arise from explosive substances and boiler explosions are explained in Chaps. VI. and IX. Further details, the insertion of which would unduly enlarge this work, may be learned from *The Factory and Workshop Acts, 1878 and 1895*, by Mr Evans Austin, and from Redgrave’s *Factory Acts*.

2. *Factories and Workshops*.—A factory, according to the Factory Acts, is either *textile* or *non-textile*. The term “textile factory” means any premises wherein, or within the close or curtilage of which, steam, water, or other mechanical power is used to move or work



machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of the following textile or other similar materials, either separately or mixed together, or mixed with any other material, or any fabric made thereof, viz.:—

- |            |                     |
|------------|---------------------|
| 1. Cotton. | 6. Hemp.            |
| 2. Wool.   | 7. Jute.            |
| 3. Hair.   | 8. Tow.             |
| 4. Silk.   | 9. China-grass, and |
| 5. Flax.   | 10. Cocoa-nut Fibre |

(Act 1878, s. 93). The term “non-textile factory” means—(1) Any of the works or places defined in Part I. of the Fourth Schedule of the 1878 Act (Appendix, No. 6), viz.:—

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| 1. Print works.                     | 10. Copper mills.                     |
| 2. Bleaching and dye-<br>ing works. | 11. Iron mills.                       |
| 3. Earthenware works.               | 12. Foundries.                        |
| 4. Lucifer match works.             | 13. Metal and india-<br>rubber works. |
| 5. Percussion - cap<br>works.       | 14. Paper mills.                      |
| 6. Cartridge works.                 | 15. Glass works.                      |
| 7. Paper-staining works.            | 16. Tobacco factories.                |
| 8. Fustian - cutting<br>works.      | 17. Letterpress printing<br>works.    |
| 9. Blast furnaces.                  | 18. Bookbinding works.                |
|                                     | 19. Flax scutch mills.                |

(2) Any premises or places named in Part II. of said Schedule wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there, viz.:—

- |                      |                         |
|----------------------|-------------------------|
| 20. Hat works.       | 24. Shipbuilding yards. |
| 21. Rope walks.      | 25. Quarries ; and      |
| 22. Bakehouses.      | 26. Pit-banks.          |
| 23. Lace warehouses. |                         |

(3) Any premises wherein, or within the close, curtilage, or precincts of which, any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to (a) the making of any article or part of any article; (b) the altering, repairing, ornamenting, or finishing of any article; and (c) the adapting for sale of any article; and in which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there (*ibid.*). In the application of the Act to *Quarries*, the modifications made by the Quarries Act, 1894, have to be observed (57 & 58 Vict. c. 42, s. 3).

The expression “workshop” means (1) any premises or places named in Part II. of said schedule which are not *factories* within the meaning of the Act; and (2) any premises, room, or place, not being a factory, where manual labour is exercised by way of trade or for purposes of gain, in or incidental to the purposes (a) (b) and (c) above mentioned, and to or over which the employer of the persons working therein has right of access or control (*ibid.*).

The Acts apply to premises in the open air, and to factories and workshops belonging to the Crown, but not to a place situated within the precincts of a factory or workshop which is used solely for some purpose other than the manufacturing process or handicraft carried on in the remainder of the premises, provided it is not otherwise brought within the Act (*ibid.*). By a later statute the provisions of the Acts in respect of accidents are extended to the following premises:—

1. Dock, wharf, quay, and warehouse;
2. Machinery and plant used in the process of loading or unloading from or to any dock, wharf, quay, or warehouse, but not to any

*vessel*, except as regards such machinery and plant when in actual use ;

3. Premises on which machinery worked by steam, water, or other mechanical power is temporarily used in the construction of a building, or in any structural work in connection with a building ;
  4. Building exceeding thirty feet in height which is being constructed or repaired by means of a scaffolding ;
  5. Building exceeding thirty feet in height in which more than twenty persons, not being domestic servants, are employed for wages ; and
  6. Laundry
- (Act 1895, ss. 22 (1) and 23).

3. *Notice of Accident*.—When there occurs in a factory or workshop, as above defined, any accident which either—

- (a) causes loss of life to a person employed in such factory or workshop ; or
- (b) causes to any person employed therein such bodily injury as to prevent him on any one of the three working days next after the accident from being employed for five hours on his ordinary work,

written notice must forthwith be sent to the Inspector of Factories, etc., for the district (Act 1895, s. 18 (1)). If the accident to a person employed as above either—

- (a) causes loss of life ; or
- (b) is produced by machinery moved by steam, water, or other mechanical power ; or

- (c) is produced through a vat, pan, or other structure (*i.e.* something built up and fixed, which can be fenced, so as to prevent persons from falling into it) filled with hot liquid, molten metal, or other substance ; or
- (d) is produced by explosion or escape of gas, steam, or metal,

written notice thereof must be forthwith sent to the “certifying surgeon” of the district, unless notice of the accident is required by sec. 63 of the Explosives Act, 1875, to be sent to a Government inspector (*ibid.* s. 18 (2); 38 Vict. c. 17, s. 63). Both notices are in a form prescribed by the Home Secretary, a copy of which will be found in the Appendix (No. 9). The notice in either case sets forth—

- (a) Name of the factory or workshop ;
- (b) Name and address of occupier ;
- (c) Nature of industry ;
- (d) Date and hour of accident ;
- (e) Time injured person commenced work on day of accident ;
- (f) Name, age, sex, and occupation of injured person ;
- (g) By what part of machinery in motion, or in what other way the accident was caused, and how the injured person was employed at the time of the accident ;
- (h) Residence of injured person ; and
- (i) Place to which injured person has been removed (Act 1891, s. 22 (2)).

To facilitate the transmission of these notices, a list of H.M. Inspectors in Scotland and their respective districts is given here :—



## LIST OF H.M. INSPECTORS OF FACTORIES AND WORKSHOPS

*H.M. Chief Inspector.*—B. A. WHITELEGGE, Esq., M.D., Home Office, London, S.W.

*H.M. Superintending Inspector.*—R. W. COOKE-TAYLOR, Esq., Regent Chambers, 121 West Regent Street, Glasgow.

| No. of District. | Name and Description of District.                                                                                                                                 | Names and Addresses of H.M. Inspectors.                                     | Names and Addresses of H.M. (Junior) Inspectors.                                                                     |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 1                | DUNDEE DISTRICT.—<br>Counties of Forfar, Perth, Fife, Clackmannan, and Kinross.                                                                                   | H. J. Wilson, Esq.,<br>13 Ward Road,<br>Dundee.                             |                                                                                                                      |
| 1A               | ABERDEEN DISTRICT.—<br>The North of Scotland.                                                                                                                     | John Calder, Esq.,<br>21 King Street,<br>Aberdeen.                          |                                                                                                                      |
| 2                | GLASGOW DISTRICT.—<br>Counties of Lanark, Renfrew, Ayr, Dumfries (except Langholm and District), Kirkcudbright, Wigtown, Argyle, Dumbarton, and part of Stirling. | R. E. Graves, Esq.,<br>Regent Chambers,<br>121 West Regent Street, Glasgow. | A. Newlands, Esq.,<br>Dangstein, Rutherglen, N.B.<br>W. F. Ireland, Esq.,<br>Clydeford Road,<br>Cambuslang, Glasgow. |
| 3                | EDINBURGH DISTRICT.—<br>Counties of Edinburgh, Linlithgow, Haddington, Berwick, Peebles, Selkirk, Roxburgh, part of Stirling, and Langholm and District.          | Captain H. W. Kindersley, 15 Queen Street, Edinburgh.                       |                                                                                                                      |

*Note.*—The Certifying Surgeon's Report is in Scotland sent to H.M. Superintending Inspector at Glasgow.

In the case of an accident in works at a mine, metalliferous mine, or quarry, the notice is sent on a different form, and addressed to the Inspector of Mines (see p. 59). With respect to accidents at the premises included as factories and workshops by the Act of 1895, the person having the actual use or occupation

of a dock, wharf, quay, or warehouse, the person using the machinery for loading or unloading, or in constructing a building, the employer of the persons working on the scaffolding in the construction or repair of the building, the occupier of the building in which more than twenty persons are employed, and the occupier of a laundry, are bound to send the statutory notices (Act, 1895, ss. 22 (1) and 23). If the statutory notices are not sent, the occupier of the factory or workshop, or the person whose duty it is to send these in the cases last mentioned, is liable to a fine not exceeding £5 (Act 1895, s. 18 (4)). Where the actual employer of the person killed or injured is not the occupier of the iron mill, blast furnace, or other factory or workshop where the accident happened, he must immediately report the occurrence to the occupier, and in default is liable to a fine not exceeding £5 (*ibid.* s. 18 (5)). Every accident occurring in a factory or workshop, of which notice is required, must be entered in the Register of Accidents kept there within one week after its occurrence, under a penalty not exceeding £10 (*ibid.* s. 20). This register is at all times open to inspection by the Inspector of Factories and the certifying surgeon for the district (*ibid.*). An Inspector of Factories has power, subject to regulations made by the Home Secretary, to appoint from time to time a sufficient number of duly registered medical practitioners to be *certifying surgeons* for the purposes of the Factory Acts (Act 1878, s. 72). These surgeons are bound to act in terms of rules made for their guidance by the Home Secretary (*ibid.*). When there is no certifying surgeon resident within three miles of a factory or workshop, the medical officer appointed by the parish council is in Scotland the certifying surgeon for such premises for the time being (*ibid.* ss. 71 and 105 (4)).

4. *Inquiry by Procurator-Fiscal.*—When the occurrence of an accident in a factory or workshop is reported to the Procurator-Fiscal within whose jurisdiction the premises are situated, his first duty is to communicate promptly by telegram with the Inspector of Factories and Workshops for the district, whose address has been given above, so as to afford him the fullest time possible to inquire into the case. If no death, or the death of a person not engaged in an industrial employment, has resulted from the accident, the Procurator-Fiscal makes inquiry or leads a precognition, and reports to the Crown Office in the mode described in Chap. II.; but if the accident has caused the death of a person so engaged, he proceeds to institute a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895 (see Chap. III.). It will be noted that a death in a factory or workshop may not necessarily form the subject of a public inquiry. If a stranger is being shown over the premises when a boiler explodes, killing him and also the fireman in charge of it, a public inquiry is held in regard to the death of the latter, but not of the former. On the other hand, the death of an operative within a factory or workshop will not be the subject of a public inquiry, if it was not reasonably believed to be due to an accident occurring in the course of his ordinary avocations. The reciprocal duty of aiding one another exists between the Procurator-Fiscal and the Inspector of Factories as it does between him and the Inspector of Mines, and the discussion in Chap. III. p. 47, on the competency of the jury adding to their verdict an expression of opinion that the death is attributable to fault on the part of some person, defective appliances, or the like, is especially relevant in the case of accidents in factories and workshops.

5. *Investigation by Certifying Surgeon.*—When a certifying surgeon receives, in pursuance of the Factory Acts, notice of an accident in a factory or a workshop, he must proceed there with the least possible delay (Act 1878, s. 32). He makes a full investigation as to the nature and cause of the death or injury resulting from that accident, and within the next twenty-four hours sends a report thereof to the inspector (see p. 70), except in the cases connected with metalliferous mines and quarries after mentioned (*ibid.*). He has, for the purpose of such investigation, the same powers as an inspector (see 1878 Act, s. 68, in Appendix, No. 6). He has also power to enter any room in a building to which a person killed or injured has been removed (*ibid.*). He is entitled to be paid such fee, not exceeding 10s. nor less than 3s., as the Home Secretary considers reasonable, which fee is paid as expenses incurred by the Secretary in the execution of the Act (*ibid.*). A form of report, with scale of fees and instructions, issued by the Home Office, will be found in the Appendix (No. 10). The certifying surgeon sends his report by post, prepaid—

(a) to H.M. Superintending Inspector of Factories, at the address given at p. 70, in the case of all accidents except those after mentioned; and

(b) to the Inspector of Metalliferous Mines for the district, at the address given at p. 60, in the case of accidents occurring at works *above ground* in a metalliferous mine, or *outside* a quarry, any part of which is more than twenty feet deep; provided that such works are connected with the mine or quarry, are situated within a mile of it, and belong to the same owner.



Accidents occurring *inside* a quarry (*i.e.* in the actual pit, hole, or excavation) are not reported on. Letters addressed to "H.M. Chief Inspector of Factories, Home Office, London," need not be prepaid.

6. *Formal Investigation*.—Where it appears to the Home Secretary that a formal investigation of an accident occurring in a factory or workshop, and its causes and circumstances, is expedient, he may, after communicating with the Lord Advocate, direct such investigation to be held (Act 1895, s. 21). The procedure is similar to that under the Coal Mines Regulation Act, 1887, already described (p. 62), substituting references to the Factory Acts for references to the Coal Mines Regulation Act (*ibid.*).

## CHAPTER VI

### OF ACCIDENTS FROM EXPLOSIVE SUBSTANCES

1. *Statute regulating Procedure*.—The procedure for the investigation of accidents caused by explosive substances is prescribed by the Explosives Act, 1875 (38 Vict. c. 17), which for brevity is referred to throughout this chapter as “Act 1875.” The scope of the present work does not permit us to enter at length into a consideration of this very interesting subject, and the reader who seeks further information ought to consult the *Guide-Book to the Explosives Act*, 1875, by Colonel Sir Vivian D. Majendie, of which the eighth edition was published in 1895, and also the Annual Report of H.M. Inspectors of Explosives, referred to afterwards.

2. *Explosives*.—The substances which are declared to be explosives within the meaning of the Act have been arranged in seven classes—

1. *Gunpowder*—ordinarily so called.
2. *Nitrate Mixture*—Chilworth Special Powder, Dahmenite, etc.
3. *Nitro-Compound* — nitro-glycerine, dynamite, gun-cotton, blasting-powders, ammonite, Ardeer powder, bellite, carbonite, kynite, amberite, ballistite, matagnite, cordite, roburite, westfalite, etc.

4. *Chlorate Mixture*—(not now manufactured).
5. *Fulminate*—of mercury or other metals, cap composition, etc.
6. *Ammunition* — percussion caps, fog signals, fuzes, cartridges, war rockets, detonators, etc.
7. *Fireworks* — firework composition, manufactured fireworks, amorces, distress signals, coloured fire, etc.

(Act 1875, s. 3). Her Majesty may by Order in Council declare that any substance which appears to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of the Act (*ibid.* s. 104).

A detailed list of substances falling within each of the classes above mentioned, will be found in the Annual Reports of H.M. Inspectors of Explosives. The latest List of Authorised Explosives is printed in the Appendix (No. 12).

3. *Notice of Accident*.—Whenever there occurs an accident by explosion or by fire—

- (a) in, or about, or in connection with a factory, magazine, or store ; or
- (b) in, or about, or in connection with registered premises, causing loss of life or personal injury,

the occupier of such factory, magazine, store, or premises must forthwith send to one of H.M. Inspectors of Explosives on behalf of the Home Secretary, notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby (Act 1875, ss. 63 and 85). This notice supersedes the

notice to H.M. Inspector of Mines or of Factories in the case of accidents from explosives (see Chaps. IV. and V.). Where an accident by explosion or by fire, causing loss of life or personal injury, occurs in, or about, or in connection with a carriage, ship, or boat, either—

(a) conveying an explosive ; or

(b) on, or from, which an explosive is being loaded or unloaded ;

or *any* accident by explosion or by fire occurs in, or about, or in connection with a carriage, ship, or boat, when there is being conveyed, loaded or unloaded, an amount—

(a) of gunpowder, exceeding half a ton ; or

(b) of any other explosive, exceeding the amount prescribed by the Act,

the owner or master of such carriage, ship, or boat, and the owner of the explosive, or one of them, must forthwith send to H.M. Inspector the notice above mentioned (*ibid.* s. 63). Failure to send notice renders the person failing liable to a penalty not exceeding £20 (*ibid.*). The meaning of the terms used in this paragraph is defined in s. 108 of the Act (see Appendix, No. 11). The Act does not apply to any factory, magazine, store, premises, wharf, place, or explosive under the control of a Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or otherwise held for the service of the Crown ; or to any of Her Majesty's ships, boats, or carriages (*ibid.* s. 97).

It will be convenient to note here the names of H.M. Inspectors of Explosives who act for the whole of the United Kingdom, namely, Colonel Sir Vivian Dering Majendie, K.C.B. ; Colonel Arthur Ford, C.B. ; and Captain Jocelyn Home Thomson, R.A. Notices



under the statute should be addressed to "The Chief Inspector of Explosives, Home Office, Whitehall, London."

4. *Inquiry by Procurator - Fiscal*.—Immediately on the Procurator-Fiscal being informed that there has occurred within his jurisdiction a case of—

- (a) serious personal injury caused by explosives, whether fatal or not; or
- (b) serious explosion, whether causing personal injury or not,

it is his duty to intimate the occurrence by telegraph to the Crown Agent on behalf of the Lord Advocate. He then proceeds to make an inquiry, or to lead a precognition, and reports the case to the Crown Office in the usual manner, as described in Chap. II. If the death of a person engaged in an industrial employment or occupation has resulted from the explosion, a public inquiry in terms of the Fatal Accidents Inquiry (Scotland) Act, 1895, will be held, as explained in Chap. III. In addition to accidents which are the *direct* result of the explosion, the Procurator-Fiscal deals in his inquiry or precognition with those produced by suffocation and poisoning from the fumes of an explosive, injuries from projected débris, and other *indirect* results.

5. *Inquiry by Inspector*.—The Home Secretary may direct an inquiry to be made by one of H.M. Inspectors of Explosives into the cause of any accident from explosion or fire, either—

- (a) in connection with an explosive within the meaning of the Act (par. 2), or
- (b) of which notice is required to be given (par. 3) (Act 1875, s. 66). The inspector has power for the purposes of his inquiry—

- (a) to enter, inspect, and examine any factory, magazine, or store of explosive, and every part thereof;
- (b) to enter, inspect, and examine any premises registered under the Act, and every part thereof in which any explosive is kept; and
- (c) to require the occupier of such factory, magazine, store, or premises to give him samples of any explosive kept therein, or of its ingredients (*ibid.* s. 55).

The occupier of the factory, magazine, store, and registered premises, and his agents and servants, must furnish the means required by H.M. Inspector as necessary for his inquiry, under a penalty not exceeding £100 (*ibid.* s. 55). At the conclusion of his inquiry, the inspector makes a report to the Home Secretary in similar terms to that of a Court of Investigation (par. 6), and the same rules respecting publication and expenses are applicable (*ibid.* s. 66 (4) and (5)).

6. *Formal Investigation.*—Where it appears to the Home Secretary, either before or after the commencement of an inquiry by H.M. Inspector of Explosives (par. 5), that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, he may, after communicating with the Lord Advocate, by Order direct such investigation to be held (Act 1875, s. 66). By the same, or a subsequent Order, he either—

- (a) appoints a person or persons possessing legal or special knowledge to assist H.M. Inspector in holding the formal investigation; or
- (b) directs in Scotland the Sheriff or Sheriff-Substitute, or other person or persons named in the same or a subsequent Order, to hold

the investigation with the assistance of H.M. Inspector or any other assessor or assessors named in the Order (*ibid.* ss. 66 (1) and 109).

When a legal assessor is required, the Lord Advocate in consultation with the Home Secretary nominates him. The tribunal thus constituted is called "the Court" (*ibid.* s. 66 (2)). The formal investigation is held in open Court, in such manner and under such conditions as the Court think most effectual for ascertaining the causes and circumstances of the accident, and for enabling them to make the report after mentioned (*ibid.* s. 66 (2)). The Court have, for the purpose of the investigation—(1) all the powers of the Sheriff of the county when acting as a Court in hearing complaints for offences against the Act; (2) all the powers of H.M. Inspector (par. 5); and (3) in addition, power—

- (a) to enter and inspect any place or building, the entry or inspection of which appears to them to be requisite;
- (b) to require by summons under their hands the attendance of all such persons as they think fit to call before them and examine;
- (c) to require answers or returns to such inquiries as they think fit to make;
- (d) to require the production of all books, papers, and documents which they consider important;
- (e) to administer an oath; and
- (f) to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination

(*ibid.* s. 66 (3)). Any person who, without reasonable excuse (proof whereof lies on him), either (a) fails to comply with any summons or requisition of

the Court after having had the expenses (if any) to which he is entitled tendered to him, or (b) prevents or impedes such Court in the execution of their duty, is liable for every such offence to a penalty not exceeding £10 ; and, in the case of a failure to comply with a requisition for making any return or producing any document, to a penalty not exceeding £10 during every day that such failure continues (*ibid.* s. 66 (6)). These penalties are recovered, in Scotland, under the provisions of the Summary Jurisdiction (Scotland) Acts, 1864 and 1881. Persons attending as witnesses before the Court are, in Scotland, allowed such expenses as would be allowed to witnesses attending on citation the Court of Justiciary (Act 1875, ss. 66 (3) and 109). In case of dispute as to the amount to be allowed, the question is referred to the Auditor of the Court of Session, who, on request under the hands of the members of the Court, ascertains and certifies the proper amount of such expenses (*ibid.*). The Court, after their formal investigation is completed, make a report to the Home Secretary, stating—

- (a) the causes of the accident ;
- (b) all the circumstances attending the same ; and
- (c) any observations thereon, or on the evidence, or on any matters arising out of the investigation, which they think right to make (*ibid.* s. 66 (4)).

The Home Secretary causes every such report to be made public in such manner as he thinks expedient (*ibid.* s. 66 (4)). All expenses incurred in or about an investigation are deemed to be part of the expenses of the Home Secretary in carrying the Act into execution (*ibid.* s. 66 (5)). It is unnecessary for us to give examples of the forms of procedure and report in these investigations, which are conducted on the same general



lines as formal investigations in regard to boiler explosions, fully illustrated in Chap. IX.

7. *Tabulation of Results.*—The results of those inquiries and investigations are summarised in the annual reports of H.M. Inspectors of Explosives. In the year 1895 the Home Office took cognisance of 152 accidents by fire or explosion, causing 40 deaths, and injuring 167 persons. These figures, which do not include non-fatal mining accidents caused by gunpowder, are considerably above the average of previous years. The greater number of the accidents arose out of the *use* of explosives, the remainder having occurred during their *manufacture, keeping, and conveyance*. Gunpowder and gelatine-dynamite caused more than half of the explosions.

## CHAPTER VII

### OF ACCIDENTS IN DANGEROUS EMPLOYMENTS

1. *Statute regulating Procedure.*—The procedure for investigating accidents in the dangerous employments after mentioned is regulated by the Notice of Accidents Act, 1894 (57 & 58 Vict. c. 28), as amended by 58 & 59 Vict. c. 37, s. 54. Throughout this chapter we shall for brevity refer to the first mentioned statute as “Act 1894.”

2. *Dangerous Employments.*—The following employments are for the purposes of the Act deemed to be specially dangerous to life and limb :—

- (a) Construction, use, working, or repair of any railway, tramroad, tramway, canal, bridge, tunnel, or other work authorised by any local or personal Act of Parliament (Act 1894, s. 2 (1) and sched.);
- (b) Use or working of any traction engine, or other engine or machine, worked by steam in the open air (*ibid.*);
- (c) Any other employment in which twenty persons or more, not being domestic servants, are employed by the same employer, which in the opinion of the Board of Trade is specially dangerous to life or limb, and to which that Board have by Order directed that the statute shall apply (*ibid.* s. 2 (2)).

The Board of Trade have further power by Order—

- (a) to revoke or modify any Order made under the foregoing powers; and
- (b) to modify or limit the application of section one of the Act to the employment specified in the schedule

(*ibid.* s. 2 (3)). Every Order is notified in the *London Gazette*, and in such other manner as may appear to the Board of Trade sufficient for giving it publicity, and is laid before both Houses of Parliament (*ibid.* s. 2 (5)). If it relates to Scotland, it is notified in the *Edinburgh Gazette* (*ibid.* s. 7). As yet no Rules or Orders have been made. The statute applies in the case of accidents occurring to persons employed by a department of the Government (*ibid.* s. 5), but does not extend to any employment which is for the time being regulated by an Act of Parliament administered by the Home Secretary, or by inspectors appointed by him (*ibid.* s. 6). These employments have been enumerated in Chaps. IV. V. and VI. It will be observed that accidents on railways are also dealt with under the Railway Regulation Acts (see Chap. VIII.), the present statute embracing accidents which the former Acts did not reach.

3. *Notice of Accident.*—Where there occurs in any dangerous employment within the meaning of the Act (par. 2), an accident which causes to any person employed therein, either loss of life, or such bodily injury as to prevent him on any one of the three working days next after such occurrence from being employed for five hours on his ordinary work, his employer must send written notice of the accident to the Board of Trade (Act 1894, s. 1 (1)). “Working day” means a day on which the person injured would, but for the

injury, be employed in his ordinary work (*ibid.* s. 1 (3)). The notice has to be sent as soon as possible, and, in case of an accident not resulting in death, not later than six days after the event (*ibid.* s. 1 (1)). The notice is in the form issued by the Board of Trade (Appendix, No. 14), and specifies—

- (a) name of Employer ;
- (b) employment, giving description used in schedule ;
- (c) day, hour, and place of occurrence of accident ;
- (d) its probable cause ;
- (e) name, residence, and occupation of any person killed or injured ;
- (f) nature of work on which such person was employed at time of accident ;
- (g) whether killed or injured ; and, if injured, the nature of the injury

(*ibid.* s. 1 (1)). Wilful default in sending this notice infers a fine not exceeding forty shillings (*ibid.* s. 1 (2)). The Board of Trade may by Order require further particulars to be specified in the notice (*ibid.* s. 2 (4)) ; but as yet no Rules or Orders have been made. In the case of an accident occurring to a person employed by a Government Department, the notice is given by the person directed to do so by a general rule of such Department (*ibid.* s. 5). The statutory notice of an accident need not be given when notice of it has to be sent to the Board of Trade under the provisions of any other Act (*ibid.* s. 6). Sec Chaps. VIII. IX. and X.

4. *Inquiry by Procurator - Fiscal.* — When an accident to which this Act applies is reported to the Procurator - Fiscal, he must make inquiry without delay, and report the facts to the Crown Office (see Chap. II.). If the death of a person engaged in



an industrial employment has resulted from it, he must take steps to institute a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895, (see Chap. III.); but this is unnecessary if the person killed was not so engaged.

5. *Formal Investigation*.—The Board of Trade may by Order direct a formal investigation to be held when it appears to them that any accident involving loss of life or bodily injury is of sufficient importance to require such investigation (Act 1894, s. 3). The objects of inquiry are the accident and its causes and circumstances (*ibid.*). The Board appoint a competent person to hold the investigation, and, if necessary, a person possessing legal, medical, or special knowledge to act as assessor. Such remuneration is assigned to those persons as the Board, with the approval of the Treasury, determine (*ibid.* s. 3 (1)). The tribunal thus constituted is called the "Court" (*ibid.* s. 3 (2)). The investigation is held in open Court, in such manner and under such conditions as the Court think most effectual for attaining the objects of the inquiry, and for enabling them to make the report after mentioned (*ibid.* s. 3 (2)). In Scotland the Court have for the purpose of the investigation all the powers of the Sheriff when acting in the exercise of his ordinary jurisdiction, and all the powers of an inspector under the Railway Regulation Acts, 1840 to 1889, described in Chap. VIII. (*ibid.* ss. 3 (3) and 7). In addition, the Court have power—

- (a) to enter and inspect, or to authorise any person to enter and inspect, any place or building the entry or inspection of which appears to them to be requisite;
- (b) to require, by summons signed by the Court, the attendance of all such persons as they

think fit to call before them for examination ;

- (c) to require answers or returns to such inquiries as they think fit to make ;
- (d) to require the production of all books, papers, and documents which they consider important ;
- (e) to administer an oath ; and
- (f) to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination (*ibid.* s. 3 (3)).

If any person without reasonable excuse (the proof of which lies on him), either (a) fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with a summons or requisition of the Court, or (b) prevents or impedes the Court in the execution of their duty, he is liable for each offence to a fine not exceeding £10 (*ibid.* s. 3 (7)). In the case of failure to comply with a requisition for making any return or producing any document, he is liable to a fine not exceeding £10 for every day that such failure continues (*ibid.*). The Court may order any costs and expenses incurred in and about the investigation (including any remuneration payable to the persons appointed to hold the same or to act as assessor) to be paid by any person summoned before them, if they find that the accident was due to the act, default, or negligence of that person (*ibid.* s. 3 (6)). This order is enforced by the Sheriff on the application of any person entitled to the benefit thereof, as if the costs and expenses were a penalty imposed by the Court (*ibid.* ss. 3 (6) and 7). Subject to such order these costs are deemed to be part of the expenses of the Board of Trade in the execution of the Act, and with the remainder of those expenses are defrayed out of

moneys provided by Parliament (*ibid.* ss. 3 (6) and 4). When such an order is made in Scotland, the costs and expenses may be recovered under the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, under which also proceedings may be taken to enforce the various penalties imposed by the Act. Every person attending as a witness before the Court, with certain exceptions, is allowed such expenses as would be allowed to a witness attending the Court of Justiciary, which appears to be the equivalent in Scotland of the "Court of Record" specified in the statute (*ibid.* s. 3 (4)). The exceptions are—

- (a) the employer of the person killed or injured ;  
and
- (b) a person in the employment of that employer  
(*ibid.*).

In case of dispute as to the amount to be allowed, the question is referred to the Auditor of the Court of Session, who, on request signed by the Court, ascertains and certifies the proper amount of the expenses (*ibid.* ss. 3 (4) and 7). The Court, after their formal investigation is completed, make a report to the Board of Trade, stating—

- (a) the causes of the accident ;
- (b) its circumstances ; and
- (c) any observations which the Court think right  
to make (*ibid.* s. 3 (5)).

The Board of Trade may cause the report to be made public in such manner as they think fit (*ibid.*). The proceedings are conducted on the same general lines as formal investigations in regard to boiler explosions, fully illustrated in Chap. IX.

## CHAPTER VIII

### OF ACCIDENTS ON RAILWAYS

1. *Statutes regulating Procedure.*—The procedure in the investigations arising out of railway accidents is regulated by the Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), and the Railway Regulation Act, 1873 (36 & 37 Vict. c. 76). For the sake of brevity these statutes will be referred to throughout this chapter as “Act 1871” and “Act 1873” respectively. It will be observed that certain accidents on railways are also dealt with under the Notice of Accidents Act, 1894, as to which reference must be made to Chap. VII., the scope of the latter statute being wider in some respects.

2. *Railway Accidents.*—The term “railway” in these Acts means the whole or any portion of a railway or tramway, whether worked by steam or otherwise, which has been authorised by any special Act of Parliament, or by any certificate under Act of Parliament (Act 1871, s. 2). The various casualties on railways, which have to be investigated in terms of the Act of 1871, are enumerated in the next paragraph.

3. *Notice of Accident.*—Where, in or about a railway, or any of the works or buildings connected



with such railway, or any building or place, whether open or enclosed, occupied by the company working such railway, there takes place in the course of such working any of the following accidents :—

- (a) an accident attended with loss of life or personal injury to any person whomsoever ;
- (b) a collision, where one of the trains is a passenger train ;
- (c) a passenger train, or any part of a passenger train, accidentally leaving the rails ; and
- (d) any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which has been specified in that behalf by any Order to be made by the Board of Trade (see Order of 31st October 1895 in the Appendix, No. 16)—

notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, must be sent to the Board of Trade (Act 1871, s. 6). This notice must be sent by the company working such railway, and also, if the accident happen to a train belonging to another company, by such other company (*ibid.* s. 6). The term “company” means a company incorporated for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes any individual or individuals, not incorporated, who are owners or lessees of, or parties to an agreement for working, a railway in the United Kingdom (*ibid.* s. 2). The notice has to be forwarded by the earliest practicable post after the accident takes place ; or by telegraph immediately after the occurrence, when the accident is one of a

class as to which the Board of Trade have by Order duly intimated to the company directed that method of intimation (*ibid.* s. 6). The company failing to comply with these provisions as to notice, is liable to a penalty not exceeding £20 for each offence (*ibid.* s. 6). The terms of the notice are prescribed from time to time by the Board of Trade (*ibid.* s. 6). The form directed by the Order of 31st October 1895 will be found in the Appendix, No. 17. It sets forth—

- (a) day and hour when accident occurred ;
- (b) nature, cause, and place where it happened ;
- (c) particulars of damage to trains or works ;
- (d) particulars of injury to persons ;
- (e) particulars as to servants of companies ;
- (f) general remarks ;

and gives a quantity of detailed information under those several heads.

4. *Inquiry by Procurator-Fiscal.* — The Procurator-Fiscal on receiving a report of a railway accident which has caused serious personal injury to anyone, or death to a person who was not at the time of the occurrence engaged in an industrial employment, makes a private inquiry, or leads a precognition, and reports the result to the Crown Office, all as described in Chap. II. If the accident has caused the death of a person engaged in an industrial employment or occupation, a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895, will be held as described in Chap. III. The death must be due in the latter case to an accident occurring in the course of the deceased's industrial employment or occupation, and, therefore, if a workman is travelling by train to his work when he is accidentally killed, the statute does not apply ; where-

as, if he is engaged in the course of his ordinary work repairing a railway bridge, when he is killed by a passing train, the Act does apply. In all fatal railway accidents the Procurator-Fiscal must be prepared for the emergence of a charge of culpable homicide or other crime, and be ready to act with promptitude so soon as he discovers facts which warrant criminal proceedings. He must further bear in mind, that within seven days after holding an inquiry, whether private or public, in regard to the death of any person who is proved to have been killed on a railway, or to have died in consequence of injuries received on a railway, he is bound to make a return of the death and the cause thereof to the Secretary for Scotland, in such form as the latter may require (Act 1873, s. 5). The form in use at this time is printed in the Appendix, No. 19.

5. *Inquiry by Inspector.*—The Board of Trade may direct an inquiry to be made by an inspector, appointed by them, into the cause of any accident falling within the description given in par. 3 (Act 1871, ss. 3 and 7). For the purpose of this inquiry the inspector has power—

- (a) to enter and inspect any railway, and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto ;
- (b) to require, by summons under his hand, the attendance of any person who is engaged in the management, service or employment, of a company, and whom he thinks fit to call before him and examine ;
- (c) to require, from such person or company, answers or returns to such inquiries for the said purpose as he thinks fit to make ; and

(d) to require and enforce the production of all books, papers, and documents of a company which he considers important

(*ibid.* s. 4). The inspector has the same powers as a Court of investigation in dealing with troublesome or obstinate witnesses (par. 6). At the conclusion of his inquiry he makes a report to the Board of Trade, stating—

- (a) the causes of the accident ;
- (b) all the circumstances attending the same ; and
- (c) any observations thereon, or on the evidence, or on any matters arising out of the inquiry, which he thinks right to make

(*ibid.* s. 7 (4)). The Board of Trade cause every such report to be made public in such manner as they think expedient (*ibid.*).

6. *Formal Investigation.*—Where it appears to the Board of Trade, either before or after the commencement of an inspector's inquiry (par. 5), that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Board may by Order direct such investigation to be held (Act 1871, s. 7). By the same or a subsequent Order, the Board either (a) appoint a person or persons possessing legal or special knowledge to assist an inspector in holding the investigation, or (b) direct, in Scotland, the Sheriff or Sheriff-Substitute, or other person or persons named in the same or a subsequent Order, to hold the investigation, with the assistance of an inspector or any other assessor or assessors named in the Order (*ibid.* ss. 7 (1) and 16). The tribunal thus constituted is termed "the Court" (*ibid.* s. 7 (2)). The formal investigation is held in open Court, in such manner and under such conditions



as the Court think most effectual for ascertaining the causes and circumstances of the accident, and for enabling them to make the report after mentioned (*ibid.* s. 7 (2)). The Court have, for the purpose of the investigation—(1) all the powers of a Court of Summary Jurisdiction when acting as a Court in the exercise of its ordinary jurisdiction (see s. 2 of the Act of 1871 in the Appendix); (2) all the powers of an inspector under the Act (par. 5); and (3) in addition, power—

- (a) to enter and inspect any place or building, the entry or inspection of which appears to them requisite ;
- (b) to require, by summons under their hands, the attendance of all such persons as they think fit to call before them and examine ;
- (c) to require answers or returns to such inquiries as they think fit to make ;
- (d) to require and enforce the production of all books, papers, and documents which they consider important ;
- (e) to administer an oath ; and
- (f) to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination

(*ibid.* s. 7 (3)). If any person without reasonable excuse (proof whereof lies on him) (a) fails to attend as a witness before an inspector or before a Court of investigation, after being summoned and having had the expenses (if any) to which he is entitled tendered to him ; or (b) fails to make an answer, give a return, produce a document, or make or sign a declaration, when required by such Inspector or Court to do so ; or (c) prevents or impedes such inspector or Court in the execution of his or their duty,—such person is liable for every offence to a penalty not exceeding £10 ; and in

the case of a refusal to make a return, or produce a document, to a penalty not exceeding £10 for every day during which such failure continues (*ibid.* s. 11). Where the offence consists of preventing or impeding, it is competent for the inspector, or a member of the Court, or any person called by him to his assistance, to seize and detain the offender until he can be conveniently taken before a Court of Summary Jurisdiction to be dealt with according to law (*ibid.* s. 11)). The statutory penalties are recovered, in Scotland, under the provisions of the Summary Jurisdiction (Scotland) Acts, 1864 and 1881 (*ibid.* s. 15). Every person summoned to attend a formal investigation, with certain exceptions, is, in Scotland, allowed such expenses as would be allowed to a witness attending on citation at the Court of Justiciary (*ibid.* ss. 7 (3) and 16). The exceptions are, all persons engaged in the management, service or employment of, or otherwise connected with, the company (*ibid.* s. 7 (3)). In case of dispute as to the amount to be allowed, the question is referred to the Queen's and Lord Treasurer's Remembrancer, who, on request under the hands of the members of the Court, ascertains and certifies the proper amount of such expenses (*ibid.* s. 7 (3)). The Court, after their formal investigation is completed, make a report to the Board of Trade, stating—

- (a) the causes of the accident ;
- (b) all the circumstances attending the same ; and
- (c) any observations thereon, or on the evidence, or on any matters arising out of the investigation, which they think right to make (*ibid.* s. 7 (4)).

The Board of Trade cause every such report to be made public in such manner as they think expedient (*ibid.* s. 7 (4)). The proceedings are conducted on the same

general lines as formal investigations in regard to boiler explosions, fully illustrated in Chap. IX.

7. *Tabulation of Results.*—The information supplied by the railway companies is elaborately tabulated by the Board of Trade. The subject is too intricate for description here, and the reader is referred to a report of the Committee appointed by the Board of Trade for the purpose of considering the Returns of Railway Accidents and Casualties, and reporting as to Improvement in Tabulation, dated 11th December 1894. A perusal of the headings under which accidents are grouped in these tables, gives a graphic impression of the variety of circumstances under which they happen, and the diversity of causes from which they result.

## CHAPTER IX

### OF ACCIDENTS FROM BOILER EXPLOSIONS

1. *Statutes regulating Procedure.*—The general procedure in relation to accidents resulting from boiler explosions is regulated by the Boiler Explosions Acts, 1882 and 1890 (45 & 46 Vict. c. 22, and 53 & 54 Vict. c. 35). For the sake of brevity these Acts are referred to throughout this chapter as “Act 1882” and “Act 1890” respectively.

2. *Boiler Explosions.*—The Boiler Explosions Acts extend to the whole of the United Kingdom (Act 1882, s. 2). They apply to every explosion of a *boiler* within the meaning of the statutes ; that is to say, any closed vessel—

- (a) used for generating steam ;
- (b) used for heating water ;
- (c) used for heating other liquids ; or
- (d) into which steam is admitted for heating, steaming, boiling, or other similar purposes

(*ibid.* s. 3). The Acts apply to any boiler explosion occurring on board a British ship (Act 1890, s. 2), but not to an explosion from a boiler—

- (a) used exclusively for domestic purposes ; or
- (b) used in the service of Her Majesty (Act 1882, s. 4 ; Act 1890, c. 2).



3. *Notice of Explosion.*—On the occurrence of an explosion from any boiler to which the Acts apply, notice thereof must, within twenty-four hours thereafter, be sent to the Board of Trade by the owner or user, or by the person acting on behalf of either (Act 1882, s. 5 (1)). This notice must contain the following particulars :—

- (1) Precise locality of the explosion, giving name and postal address of premises or works ;
- (2) Day and hour of explosion ;
- (3) Number of persons killed ;
- (4) Number of persons injured ;
- (5) General description of boiler ;
- (6) Purposes for which it was used ;
- (7) Part of the boiler which failed, and the extent of failure generally ;
- (8) Pressure at which the boiler was worked ;
- (9) Name and address of any society or association by whom the boiler was last inspected or insured ; and
- (10) Such other particulars (if any) as the Board of Trade may require by notice inserted in the *London Gazette*.

It is in the form given in the statutory schedule, or in such other form as the Board of Trade may from time to time approve for the purpose (*ibid.* s. 5 (2)). No rules having as yet been made by the Board of Trade under the Boiler Explosions Acts, the statutory form is employed. In the case of an explosion occurring at sea, the notice is sent by the owner or master of the ship (Act 1890, s. 3). It must be sent to the Board of Trade within twenty-four hours after the occurrence of the explosion, or as soon thereafter as possible (*ibid.*). This provision does not apply where a report of the explosion has been duly sent under the

provisions of the Merchant Shipping Act, 1854, s. 326 (*ibid.*). This statute is now repealed, but the section in question is re-enacted by the Merchant Shipping Act, 1894, s. 425. Any person who makes default in sending notice of an explosion is liable to a fine not exceeding £20 (Act 1882, s. 5 (3)).

4. *Inquiry by Procurator-Fiscal*.—When a boiler explosion is reported to the Procurator-Fiscal, he must make a private inquiry without delay, and report the facts to the Crown Office (see Chap. II.). If the explosion has caused the death of a person engaged in an industrial employment, he must take steps to institute a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895 (see Chap. III.). The distinction between a person engaged in an industrial employment and a person not so engaged, explained in that chapter, must be carefully observed in accidents of this sort; because a boiler, when it explodes, is as likely to kill a visitor as an operative, yet the statute extends only to the case of the latter.

5. *Inquiry by Inspector*.—On receiving notice of a boiler explosion the Board of Trade may, if they think fit, appoint one or more competent and independent engineers, practically conversant with the manufacture and working of boilers, to make a preliminary inquiry with respect to the explosion (Act 1882, s. 6 (1)). The person so appointed has the powers of a Court of investigation as afterwards set forth (*ibid.*). He reports in like manner (*ibid.* s. 6 (5)).

6. *Formal Investigation*. — The Board of Trade may order a formal investigation of the causes and circumstances attending an explosion, if it appears to them, either upon or without preliminary inquiry, that

such investigation is expedient (Act 1882, s. 6 (1)). In the great majority of cases this is not found to be necessary. Not less than two Commissioners appointed by the Board of Trade constitute the Court (*ibid.* s. 6 (2)). One at least of these must be a competent and practical engineer, specially conversant with the manufacture and working of steam boilers, and one a competent lawyer (*ibid.*). One of the Commissioners specially selected by the Board of Trade presides (*ibid.*). The investigation is held in open Court, at or near the scene of the explosion, in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the explosion, and for enabling them to make the report after mentioned (*ibid.* s. 6 (2) and (3)). The procedure is illustrated in par. 7. The Court have, for the purposes of their investigations, all the powers of a Court of Summary Jurisdiction when acting as a Court in the exercise of its ordinary jurisdiction (*ibid.* s. 6 (4)). A "Court of Summary Jurisdiction" means, in Scotland, a Sheriff, justice of the peace, or other magistrate, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties (*ibid.* s. 3). In addition, the Court have for the same purposes power—

- (a) to enter and inspect, or appoint anyone to enter and inspect, any place or building, the entry or inspection of which appears to them to be requisite ;
- (b) to require, by summons under their hand, the attendance of all such persons as they think fit to call before them and examine ;
- (c) to require answers or returns to such inquiries as they think fit to make ;
- (d) to require and enforce the production of all

books, papers, and documents which they consider important ;

(e) to administer an oath ; and

(f) to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination

(*ibid.* s. 6 (4)). Every person who (a) refuses to attend as a witness after having been duly required to do so, and after having had a tender of the expenses made to him, or (b) refuses or neglects to make an answer, give a return, produce any documents in his possession, or make or subscribe any declarations required under the powers of the 1882 Act, is liable for each such offence to a fine not exceeding £10 (Act 1890, s. 4). These and the other fines imposed by the Acts are recoverable, in Scotland, under the provisions of the Summary Jurisdiction (Scotland) Acts, 1864 and 1881 (Act 1882, s. 8). The Court may order either a person summoned before them, or the Board of Trade, to pay the costs and expenses of a preliminary inquiry or a formal investigation, or any part of these, including the remuneration of the persons holding the inquiry or investigation (*ibid.* s. 7). The order is, on the application of any party entitled to the benefit of it, enforced by a Court of Summary Jurisdiction, as if the costs and expenses were a penalty imposed by such Court (*ibid.*). The Board of Trade may, if they think fit, pay the persons holding an inquiry or investigation such remuneration as they may with the consent of the Treasury appoint (*ibid.*). All such costs and expenses ordered by the Court to be paid to the Board of Trade are accounted for and paid to the Mercantile Marine Fund, and there are charged on, and paid out of that fund, all costs and expenses incurred by the Board under these Acts (so far as not



otherwise provided for), including the remuneration above mentioned, and any costs and expenses ordered by the Court to be paid by the Board of Trade (57 & 58 Vict. c. 60, ss. 676 and 677). Every person summoned to attend a formal investigation, with certain exceptions, is, in Scotland, allowed by the Board of Trade such expenses as would be allowed to a witness attending a criminal trial by jury in the Sheriff Court (Act 1882, s. 6 (4)). The exceptions are—

- (a) the owner of the boiler ;
- (b) the user of the boiler ;
- (c) a person in the service or employment of either ;
- (d) a person in anyway connected with the working or management of the boiler (*ibid.* s. 6 (4)).

In case of dispute as to the amount to be allowed, the question is referred by the Court of investigation to the Auditor of the Court of Session, who, on request, under the hands of the members of the Court, ascertains and certifies the proper amount of such expenses (*ibid.* s. 6 (4)). The Court, after their formal investigation has been made, present a full and clear report to the Board of Trade, setting forth—

- (a) the causes of the explosion ;
- (b) all the circumstances attending it ;
- (c) the evidence taken ; and
- (d) any observations on the explosion, or on the evidence, or on any matters arising out of the investigation, which they think right to make (*ibid.* s. 6 (5)).

The Board of Trade cause the report to be made public in such manner as they think fit (*ibid.*). When no formal investigation is held, the engineer's report of

the preliminary inquiry is made public in like manner (*ibid.*).

7. *Procedure at Investigation.*—When the Board of Trade resolve to hold a formal investigation in regard to the circumstances of a boiler explosion, they appoint a law agent residing in the locality to act as solicitor and conduct the case for them. They also appoint two Commissioners—a person learned in the law, and a practical engineer—to hold the investigation. The Commissioners meet and fix a time and place for hearing the evidence. The place is usually some convenient room near the scene of the explosion. They issue summonses, signed by themselves, requiring the parties to the cause and the witnesses to attend at the time and place appointed. After the evidence has been led, or while it is in the course of being led, the solicitor for the Board of Trade intimates verbally to the parties the view of the case which he intends to ask the Commissioners to adopt. He also formulates certain questions, which he puts to the Court. These questions, *inter alia*, ask the Court to give a finding (1st) as to the cause of the explosion, and (2nd) as to whether blame attaches to any person. In the event of an affirmative answer being given to the latter question, the solicitor usually asks the Commissioners to find the person who is to blame liable in the whole or part of the costs and expenses of the investigation. The following forms illustrate the procedure :—

(1) *Summons to attend a Formal Investigation*

*The Boiler Explosions Acts, 1882 and 1890*

To Mr. WILLIAM M'GREGOR, Farmer  
New Mains, Glenmore.

Take notice that by virtue of the provisions of the Boiler Explosions Act, 1882 (45 & 46 Vict. c. 22),—

WE HEREBY require you to attend personally before us at the Invererne Arms Hotel, Ernebridge, on Tuesday, 9th February current, at ten of the clock forenoon, for the purpose of being examined upon oath upon the following matters, that is to say, the causes and circumstances attending the explosion of a boiler at New Mains Farm.

And take notice that we also require you then and there to produce a report upon the said boiler prepared by Mr. John Fleming, engineer, Blankton, of date 3rd June 1896, together with all books, papers, or documents which may be in your possession, or under your control, containing any information relative to the matters aforesaid.

And we further give you notice that under section seven of the said Act the Court may order the costs and expenses of this formal investigation, or any part thereof, to be paid by you, or any person summoned before us.

Given under our hands this 1st day of February 1897,

JOHN ALLAN, *Commissioner*.

GEO. HENDERSON, *Commissioner*.

*Note.*—Any person neglecting or refusing to attend as required by this summons, will incur a penalty not exceeding £10.

## (2) *Report*

*Boiler Explosions Acts, 1882 and 1890*

*Report of Formal Investigation (No. 904)*

Explosion of a Boiler at the Farm of New Mains,  
Glenmore Parish, Blankshire.

In pursuance of our appointments, dated the first day of February 1897, we held a formal investigation within the Invererne Arms Hotel, Ernebridge, on the 9th day of February 1897, when Mr. Ernest Hughes, solicitor, Blankton, appeared for the Board of Trade, Mr. William Robertson, solicitor, Lynmouth, appeared

for Mr. William M'Gregor, the owner of the boiler, who, on the motion of his agent, was made a party to the investigation. Mr. John Fleming, engineer, Blankton, who was present, was, on the motion of Mr. Hughes, also made a party to the investigation.

Having heard parties and considered the evidence adduced, we beg to report as follows:—

### 1. *Place and Date of Explosion*

The explosion occurred about 1.30 p.m. on Wednesday, 13th January 1897, at the farm of New Mains, Glenmore Parish, Blankshire.

### 2. *Name and Address of Owner*

Mr. William M'Gregor, farmer, New Mains, Glenmore.

### 3. *Person killed*

William Wheeler, aged 39 years, the overseer of the farm.

### 4. *Description and principal Dimensions of the Boiler*

The boiler was of the horizontal, cylindrical, externally fired type, and made of iron. [*Here follows description.*]

The mountings consisted of—

One  $3\frac{5}{8}$  inches lever safety-valve, which appears to have been loaded by means of two weights to about 85 lb. per square inch.

One feed check-valve.

One dial pressure-gauge, graduated up to 100 lb. per square inch.

One glass water-gauge.

One plug in the bottom for emptying the boiler.

One man-hole 16 inches by 12 inches, and one mud-hole at the bottom of the front plate, measuring  $6\frac{1}{2}$  inches by  $3\frac{1}{4}$  inches.



### 5. *Name of Maker and Age of Boiler*

The boiler was made about the beginning of 1861, by Messrs. Jones & Co., Blackfriars Foundry, Blankton.

### 6. *Persons or Societies who have inspected the Boiler*

The boiler has never been inspected by anyone.

### 7. *Nature of the Explosion*

The longitudinal seam at the right-hand side of the fire in the front ring of plating appears to have given way first, and this ring of plate having opened out and been torn from the rest of the boiler, was projected over several houses, and landed in the courtyard, fully 100 yards distant. The second ring was ripped across in a spiral direction, and circumferentially round its attachment to the back end, and the whole boiler was completely wrecked and destroyed.

### 8. *Cause of the Explosion*

The explosion was caused by corrosion of the bottom plates of the boiler, especially at the back of the longitudinal seam already mentioned, along which the thickness was reduced to a knife-edge, marked A, fig. 3, on the accompanying sketch. The boiler was, therefore, quite unfit to be worked at any useful pressure; and in addition to this, the safety-valve appears to have been loaded to about double the pressure that would have been suitable for the boiler when new.

### 9. *General Remarks*

At the conclusion of the evidence, the following questions were put to us by Mr. Hughes on behalf of the Board of Trade:—

1. What was the cause of the explosion of the boiler in question?
2. Had Mr. M'Gregor, or his overseer, the deceased Mr. Wheeler, the necessary technical knowledge to form an opinion as to the condition of the boiler in question, or were sufficient

steps taken through competent persons to ascertain that the boiler was fit to be used at the time of the explosion?

3. Was Mr. M'Gregor to blame for the boiler being used in the state it was in at the time of the explosion?
4. Does blame attach to Mr. Fleming, or to anyone else?

Having heard parties and Mr. Hughes, we stated as follows:—[*Here follows a full account of the circumstances of the accident, with the observations of the Court thereon, and their answers to the questions.*]

3. With regard to Mr. M'Gregor, we are of opinion that he was in fault in respect that [*Here follow reasons*].
4. We think that no blame whatever attaches to Mr. Fleming.

We have directed that Mr. M'Gregor should pay to the solicitor to the Board of Trade the sum of £20 towards the costs and expenses of this investigation.

Dated the 12th day of February 1897,

JOHN ALLAN, *Commissioner*.

GEO. HENDERSON, *Commissioner*.

*To the Assistant Secretary,*  
BOARD OF TRADE, LONDON.

8. *Tabulation of Results.*—Much interesting information is to be gathered from the annual reports to the Board of Trade on the working of the Boiler Explosions Acts. From the report for 1896 it appears that fourteen formal investigations were held during the year embraced in it, involving the death of twelve persons and injury of twenty-two. In five of these cases no order was made as to costs; but in nine cases the owners of the boilers or other persons responsible were ordered to pay sums varying from £5 to £60. Wherever the finding of the Court attached blame to the owner, an order for costs was made, except in one

instance, where the owner, who seemed to have been ignorant of boiler management, paid for his ignorance with his life. In no case was the explosion attributed to unavoidable accident, although in three instances the Court attached blame to no one. Taking the total number of reported explosions (seventy-nine), the causes may be classified thus—

|                                                                                                          |          |
|----------------------------------------------------------------------------------------------------------|----------|
| 1. Deterioration, corrosion, and defective safety-valves, etc. . . . .                                   | 33       |
| 2. Ignorance or neglect of attendants . . . .                                                            | 14       |
| 3. Defective design, workmanship, material or construction, and undue working pressure . . . . .         | 26       |
| 4. Overheating, injury in course of repairs, choking of valve outlet, and unascertained causes . . . . . | 6        |
|                                                                                                          | <hr/> 79 |

Almost every kind of boiler formed the subject of inquiry,—vertical, marine, land, locomotive, stills, drying cylinders, and manufacturing ovens. The control which the Board of Trade exercise over merchant shipping enables their officials to obtain information of every explosion on board ship; but as regards boilers on land, they are mainly dependent upon the statutory notices. The report, as a whole, shows that neglect on the part of steam users is the leading cause of boiler explosions; but, in comparison with the number of boilers in use in the United Kingdom, the percentage of cases in which neglect has led to a serious explosion is extremely small. The system of inquiry and investigation controlled by the Board of Trade, imposes a salutary check on carelessness and foolhardiness, and prevents the more frequent occurrence of one of the most terrible forms of accident with which we are acquainted.

## CHAPTER X

### OF ACCIDENTS ON BOARD SHIPS AND BOATS

1. *Statute regulating Procedure.*—The leading statute in regard to the investigation of maritime accidents is the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). This Act is for brevity cited throughout this chapter as “Act 1894.” In addition, however, it is necessary in the case of accidents from explosive substances and from boiler explosions, to keep in view the statutes dealing with such occurrences (see Chaps. VI. and IX.). In pursuance of the 479th section of the Merchant Shipping Act, the Lord Chancellor makes general rules for carrying into effect the enactments relating to formal investigations. The Shipping Casualties Rules, 1895, which will be found in the Appendix (No. 23), are the regulations in force at the present time. For fuller details, reference may be made to Murton’s *Law and Practice of Wreck Inquiries*, 1884, and Pulling’s *Merchant Shipping Act*, 1894.

2. *Shipping Casualties.*—Most of the occurrences which fall within the statutory definition of “Shipping Casualties” are not accidents in the strict meaning of the term, but acts of God (see Chap. I. p. 2).

The two following cases, however, come within the scheme of this work :—



- (a) Loss of life ensuing from a casualty happening to, or on board a ship on or near the coasts of Scotland; and
- (b) Loss of life ensuing from such a casualty happening in any place outside the United Kingdom, if a witness is found in Scotland (Act 1894, s. 464).

The term "ship" includes every description of vessel used in navigation not propelled by oars (*ibid.* s. 742).

3. *Notice of Shipping Casualties.*—The master of a ship for which an official log-book is required must enter therein every case of injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted (if any) (Act 1894, s. 240). When a steamship has sustained or caused any accident occasioning loss of life or serious injury to any person, her owner or master must within twenty-four hours after the occurrence, or as soon thereafter as possible, transmit to the Board of Trade, by letter signed by him, a report of the accident and of the probable occasion thereof (*ibid.* s. 425 (1)). The letter must state the name of the ship, her official number (if any), the port to which she belongs, and the place where she is (*ibid.*). In the case of an accident arising from a boiler explosion, this notice takes the place of the statutory intimation under the Boiler Explosions Acts (p. 98). If the owner or master fails without reasonable cause to give the prescribed notice, he is for each offence liable to a fine not exceeding £50 (Act 1894, s. 425 (2)). This provision as to notice applies to all British ships, and to all foreign steamships carrying passengers between places in the United Kingdom (*ibid.*).

4. *Accidents on board Fishing Boats.*—The skipper of a fishing boat must keep a record of every injury sustained by any member of his boat's crew while at sea, or by any person on board his boat (Act 1894, s. 385). This record he must produce to any superintendent, when required by him, and he must also send it to the superintendent at the port to which the boat belongs, at such periods as the Board of Trade direct (*ibid.*). He must make a report of the occurrence to the superintendent at the port where his boat's voyage ends, within twenty-four hours of the boat's arrival at that port (*ibid.*). The record and report are in the form approved by the Board of Trade (*ibid.*). If a skipper fails without reasonable excuse to comply with these provisions, he is liable for each offence to a fine not exceeding £20 (*ibid.*). The superintendent at or nearest to the port to which a fishing boat belongs, or at which such boat arrives after an accident happens, or is supposed to have happened, may make an inquiry into the cause and particulars of the occurrence (*ibid.* s. 386). He has for this purpose the powers of a Board of Trade inspector under the 729th section of the Act (*ibid.*). If in the course of his inquiry it appears to him that the occurrence has been caused, or was accompanied by, violence, or the use of any improper means, he reports the matter to the Board of Trade, and also, if the emergency of the case in his opinion so requires, takes immediate steps for bringing the offender to justice (*ibid.* s. 386). He may, if in his discretion he thinks it necessary, cause the offender to be arrested and thereafter dealt with in due course of law (*ibid.*). As a rule, however, he will report to the Procurator-Fiscal, and allow him to deal with the case. When loss of life arises by reason of a casualty happening to or on board a boat belonging to a fishing vessel, the

Board of Trade may cause an inquiry to be made, or a formal investigation to be held, as in the case of a shipping casualty (*ibid.* s. 468).

5. *Inquiry by Procurator-Fiscal.*—When a shipping casualty, or an accident on board a fishing boat, is reported to the Procurator-Fiscal, he ascertains whether the matter falls within his jurisdiction, whether loss of life has resulted, and whether there is any suspicion that the casualty was due to, or accompanied by, violence. If no death has occurred, or if the death was due to storm or other natural cause without human intervention, or was that of a person not engaged in an industrial occupation, he makes an inquiry or leads a precognition as explained in Chap. II. When the death of a person engaged in an industrial employment or occupation has resulted from the accident, a public inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895, has to be held, as to which reference is made to Chap. III., and particularly to p. 26, where we have considered some questions of jurisdiction as regards maritime accidents.

6. *Preliminary Inquiry.*—The following persons may hold a preliminary inquiry respecting a shipping casualty in Scotland, viz. :—

- (a) The inspecting officer of the coastguard, or chief officer of Customs, residing at or near the place where the casualty occurs, where that is situated on or near the coast of Scotland; or
- (b) The inspecting officer of the coastguard, or chief officer of Customs, residing at or near any place in Scotland at which the witnesses

with respect to the casualty arrive, or are found, or can be conveniently examined,—where the scene of the casualty is situated outside the United Kingdom; or

- (c) A person appointed for the purpose by the Board of Trade,—in any of these cases

(Act 1894, s. 465). The person holding the inquiry has for the purpose of doing so all the powers of a Board of Trade inspector under the 729th section of the Act (*ibid.*).

7. *Formal Investigation.*—A person authorised to make a preliminary inquiry, with or without such inquiry, (a) in any case where it appears to him requisite or expedient that a formal investigation should be held, and (b) in any case where the Board of Trade so direct, must apply to the Sheriff who has jurisdiction at the place of inquiry, to hold a formal investigation (Act 1894, s. 466 (1)). The application must be acceded to (*ibid.*). A Wreck Commissioner appointed under the Act must, when requested by the Board of Trade, hold such an investigation (*ibid.* s. 466 (2)). The Sheriff or the Wreck Commissioner has the assistance of one or more assessors of nautical, engineering, or other special skill or knowledge, appointed out of a list of assessors approved by a Secretary of State (*ibid.* ss. 466 (3) and 467). Where the investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate, or engineer, the Court must have the assistance of not less than two assessors having experience in the Merchant Service (*ibid.* s. 466 (4)). It is the duty of the person who applied to the Court, to superintend the management of the case, and to render such assistance to the Court as is in his power (*ibid.* s. 466 (5)). When an investigation is to be held



in Scotland, the Board of Trade may remit the same to the Lord Advocate, to be prosecuted in such manner as he may direct (*ibid.* s. 466 (13)). The proceedings take place in the Sheriff Court House, town hall, or other suitable place, but not in a Court ordinarily used as a Police Court, unless no other suitable place is, in the opinion of the Board of Trade, available (*ibid.* s. 466 (12)). All enactments relating to the Court have effect for the purposes of the investigation, as if the place at which the Court is held were a place appointed for the exercise of its ordinary jurisdiction (*ibid.*). If a charge is made against any person in the course of the proceedings, he must be allowed an opportunity of making a defence (*ibid.* s. 466 (11)). The Court have all the powers of the Sheriff when acting in the exercise of his ordinary jurisdiction (*ibid.* s. 466 (10)). The procedure will be illustrated in the next paragraph by an example taken from an actual investigation. After hearing the evidence and the parties, the Court make a report to the Board of Trade, containing a full statement of the case, and of the opinion of the Court thereon, accompanied by such report of, or extracts from, the evidence, and such observations as the Court think fit to make (*ibid.* s. 466 (6)). Each assessor either signs the report, or states in writing to the Board of Trade his dissent therefrom, and the reasons for that dissent (*ibid.* s. 466 (7)). The Court may make such order as they think fit respecting the costs of the investigation, or any part thereof, and such order is enforced by them as an order for costs under the Summary Jurisdiction (Scotland) Acts, 1864 and 1881 (*ibid.* s. 466 (8)). The Board of Trade may, if they think fit, pay the costs of any formal investigation (*ibid.* s. 466 (9)), and after the investigation has been held may order the case to be reheard, either generally, or as to part thereof. They must do so—

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if, for any other reason, there has in their opinion been ground for suspecting that a miscarriage of justice has occurred (*ibid.* s. 475 (1)).

They may order the case to be reheard, either by the Court or authority by whom it was heard in the first instance, by the Wreck Commissioner, or by the senior Lord Ordinary, or any other judge in the Court of Session whom the Lord President of that Court may appoint for the purpose (*ibid.* s. 475 (2)). Where, on any such investigation, a decision has been given with respect to the cancelling or suspension of the certificate of a master, mate, or engineer, and an application for a rehearing either has not been made, or has been refused, an appeal lies from the decision to either Division of the Court of Session (*ibid.* s. 475 (3)). The whole procedure in the hearing, and in the rehearing or appeal, is conducted in accordance with the rules made by the Lord Chancellor (*ibid.* ss. 466, 475 (4), and 479).

8. *Procedure at Investigation.*—After the Receiver of Wrecks has taken the depositions of the witnesses who can throw light upon the circumstances of a shipping casualty, these and the other papers are forwarded to the Board of Trade, who, after consideration, direct a formal investigation to be held by the Sheriff or some other official with the requisite nautical assessors. There is no application by petition or other initial writ; but the Sheriff, or official selected, is orally requested to fix a time and place for holding the investigation. At this diet the Order by the Board of Trade is produced to the Court. A notice of investiga-

tion, containing a statement of the questions to be raised on the hearing, is, previous to the diet, served upon every party interested. On the conclusion of the proceedings the report by the Court, and all the papers relative to the matter, are transmitted to the Board of Trade. Perhaps the most satisfactory method of conveying a general idea of the procedure will be the insertion here of the following examples, which have been adapted from the papers in an actual investigation. The whole proceedings are, as already stated, regulated by the Shipping Casualties Rules, 1895. These rules are printed in the Appendix (No. 23), and with the examples now furnished give sufficient details for all practical purposes:—

(1) *Sheriff Clerk's Certificate*

MERCHANT SHIPPING ACT, 1894

*Vulcan* (s.s.) and *Mars* (s.s.)

This inquiry was held at the Sheriff Court House, Blankton, before Ralph Abercrombie, Esquire, Sheriff-Substitute of Blankshire, assisted by the following Assessors, viz. :—

Captain James Blake.

Captain Frank Stevenson.

The sittings of the Court each day were as follows:—

1896, 6th October—from 11 a.m. to 4 p.m.

„ 7th October—from 11 a.m. to 4 p.m.

„ 8th October—from 11 a.m. to 1 p.m.

The above-named Assessors attended all these sittings, and further, they both attended at the Sheriff Court House, Blankton, from 1 p.m. to 4 p.m. on the 8th October 1896, to settle the report, which was afterwards fair copied and sent to them for signature.

CHAS. GRAHAM,  
*Clerk of the Court.*

Blankton, 10th October 1896.

(2) *Procedure*

## THE MERCHANT SHIPPING ACT, 1894

*Vulcan* (s.s.) and *Mars* (s.s.)

In the matter of a formal investigation held at the Sheriff Court House, Blankton, on the 6th, 7th, and 8th days of October 1896, before Ralph Abercrombie, Esquire, Sheriff-Substitute of Blankshire, assisted by Captains James Blake and Frank Stevenson, into the circumstances attending the loss of the British steamship *Vulcan* of Lynmouth, through collision with the British steamship *Mars* of Lynmouth, in the Blank Firth, on the 19th September 1896, whereby loss of life ensued.

*Report of Court*

The Court, having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds, for the reasons stated in the annex hereto, that the loss of the *Vulcan* was due to her being run down by the *Mars*, through the careless navigation of the latter vessel by her master, Mr. Abraham Ross, whose certificate, numbered 000,000, the Court suspends for nine calendar months from the date hereof. The loss of life was due to the sinking of the *Vulcan*, owing to the injury received in the collision. Dated this 8th day of October 1896.

RALPH ABERCROMBIE, *Judge*.

We concur in the above report,

JAS. BLAKE,  
FRANK STEVENSON, } *Assessors*.

*Annex to the Report*

[*Here are stated fully the circumstances of the case, the opinion of the Court touching the causes of the casualty, and the conduct of any persons implicated therein, and then the record proceeds as follows*]:—

At the conclusion of the evidence led by the Board



of Trade, the following questions were submitted for the opinion of the Court by Mr. Ernest Hughes, solicitor for the Board of Trade. Mr. George Knox, solicitor for the master of the *Mars*, objected to questions 9 and 10, in respect that they had been added to the questions originally served on the master of the *Mars*; but the Court repelled this objection, having regard to the Shipping Casualties Rules, 1895, approved of by the Lord Chancellor.

### *Questions*

1. Was the *Vulcan* at anchor in a proper position?
2. Was a proper lookout kept on board the *Vulcan*?
3. When the crew of the *Vulcan* saw that there was risk of collision, did they do their best to warn the *Mars*?
4. Was the master of the *Mars* justified in proceeding down the west side of the mid-channel?
5. Was the mate of the *Mars* justified in leaving the lookout to check tickets before the vessel reached the Greyscaurs Lighthouse?
6. Having regard to the position of the navigating bridge on board the *Mars*, was the range of view from that bridge partially obscured? If so, did the master take proper measures to ensure that a proper lookout was kept on board?
7. Was a good and proper lookout kept on board the *Mars*?
8. What was the cause of the collision and loss of life?
9. Were the boats of the *Mars* ready for lowering without delay in case of emergency?
10. Were prompt and proper measures taken by the master of the *Mars* to render assistance to the crew of the *Vulcan*?
11. Were the loss of the *Vulcan* and loss of life caused by the wrongful act or default of the master of the *Vulcan*, or master and mate of the *Mars*, or either of them?

Mr. Ernest Hughes then addressed the Court on behalf of the Board of Trade; Mr. George Knox replied on behalf of the master of the *Mars*; and Mr. John Wright replied on behalf of the master of the *Vulcan*. The Court gave judgment as above, and returned the following answers to the above questions of the Board of Trade:—

### *Answers*

1. The *Vulcan* was anchored in a proper position.
2. A proper lookout was kept on board the *Vulcan*.
3. When the crew of the *Vulcan* saw that there was risk of collision, they did their best to warn the *Mars* by hailing her.
4. The master of the *Mars* was not justified in proceeding down the west side of the channel.
5. The mate of the *Mars* was not justified in leaving the lookout to check passenger tickets before the vessel had passed the Greyscaurs Lighthouse.
6. The range of view from the navigation bridge on board the *Mars* is partially obscured by the forward funnel, and the master did not take proper measures to ensure that a proper lookout was kept.
7. A good and proper lookout was not kept on board the *Mars*.
8. The collision between the *Mars* and the *Vulcan* was due to a proper lookout not having been kept on board the *Mars*. The loss of life was owing to the sinking of the *Vulcan*.
9. According to the evidence, the boats of the *Mars* were ready for lowering in case of emergency.
10. Prompt and proper measures were taken by the master of the *Mars* to render assistance to the crew of the *Vulcan* by lowering a boat. It might have been as well to have thrown overboard some of the life-buoys secured on the bridge.
11. The loss of the *Vulcan* and the loss of life were caused by the wrongful act or default of the master and the chief officer of the *Mars*.

The Court suspended the certificate of Abraham Ross, the master of the *Mars*, for nine months, and severely censured the mate, Alexander Simpson.

On the application of the master of the *Mars*, the Court decided to recommend to the Board of Trade that a mate's certificate should be granted to him during the time of his suspension.

RALPH ABERCROMBIE,  
*Judge.*

We concur,

JAS. BLAKE,  
FRANK STEVENSON, } *Assessors.*

Blankton, 8th October 1896.

## APPENDIX

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IN this Appendix the material portions only of the statutes, orders, notices, and [rules, so far as applicable in Scotland, have been printed, and the enactments have been revised so as to give effect to later modifications. A number is affixed to the title of each item for convenience in reference.

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### CHAPTER III.—FATAL INDUSTRIAL ACCIDENTS

#### 1. THE FATAL ACCIDENTS INQUIRY (SCOTLAND) ACT, 1895 (58 & 59 VICT. C. 36)

II. This Act shall extend to and include all cases of death of any person or persons, whether employers or employed, engaged in any industrial employment or occupation in Scotland, due or reasonably believed to be due to accident occurring in the course of such employment or occupation.

III.—(1) Upon the occurrence of any death to which this Act applies, the procurator-fiscal of the county or district in which the accident shall have taken place, shall, so soon as he receives information of the death or deaths, proceed to collect evidence thereanent, and shall also forthwith present to the sheriff a petition craving him to hold a public inquiry in regard to the cause or causes of the death or deaths, and the circumstances of the accident, and shall also furnish to the sheriff clerk, so far as possible, by letter posted or delivered, information as to the names and addresses of the wife or husband, or of the nearest known relative, and of the employer, if any, of each person who has lost his life in the accident.



(2) If more deaths than one have resulted from the same accident, the petition and inquiry shall relate to the whole deaths which have resulted therefrom.

IV.—(1) Upon presentation of the petition, which shall narrate briefly the circumstances of the case so far as known to the procurator-fiscal, the sheriff shall pronounce an order directing that a public inquiry in regard to the death shall be held at a time to be specified in the order, being a time as soon as reasonably possible, in such court house within his jurisdiction as may be nearest to the place where the accident occurred, or, if special circumstances appear to him to make it expedient, in such other court house or other building as may be available and convenient, and shall grant warrant to cite witnesses and havers to attend at such inquiry, at the instance of the procurator-fiscal, and of all parties who may be entitled to appear, as hereinafter provided.

(2) Intimation of the time and place of the inquiry shall be made by the sheriff clerk, so far as possible, by letter, posted or delivered, upon information as to their names and addresses being furnished to him by the procurator-fiscal, to the wife or husband, or to the nearest known relative, and to the employer, if any, of each person who has lost his life in the accident. In any case in which it is competent for any official or department of Her Majesty's Government to cause public inquiry to be made into the facts and circumstances of the accident under the provisions of any statute in force for the time being, then such intimation shall also be made to such official or department. The sheriff clerk shall also cause intimation of the time and place of the inquiry to be made by advertisement in a newspaper circulating in the district, or if there be more than one such newspaper, then in two of them.

(3) In the event of the Secretary for Scotland being satisfied that the sheriff is unable, owing to the pressure of official duty or other cause which the Secretary for Scotland shall hold to be sufficient, to hold the inquiry, the Secretary for Scotland shall appoint a competent person, who shall possess the qualifications necessary for the office of sheriff-substitute, to hold the inquiry in his stead, and the person so appointed shall hold the inquiry and shall have all the powers of a sheriff under this Act, for the purposes of the said inquiry.

(4) The inquiry shall be by the sheriff and a jury, and the sheriff clerk shall cite ten common, and five special, jurors for each such inquiry, or, if more inquiries than one are appointed by the sheriff to be held on the same day, for all the inquiries to be held by him on that day.

(5) The jury shall consist of five common and two special jurors, who shall be chosen from the list of persons cited as

aforesaid, in the manner prescribed by section fourty-four of the Court of Session Act, 1868.

(6) The statutory provisions now in force in regard to challenges of jurors in civil and criminal cases in Scotland shall not apply to inquiries under this Act, but any person interested in the inquiry may state to the sheriff any objection which he has to a person balloted to serve on the jury, and if the sheriff shall consider that sufficient cause has been shown why such person should not so serve, he shall not allow the said person to serve upon the jury. Provided that, in an inquiry into the death of a person under this Act, neither the employer or employers of such person, nor any person or persons engaged under the same employers as such person, shall be jurors.

(7) The jury, after hearing the evidence, and the persons appearing thereon if they so desire, and the summing-up thereof by the sheriff, if he shall consider such summing-up necessary or proper, shall return a verdict setting forth (so far as such particulars have been proved) when and where the accident and the death or deaths to which the inquiry relates took place, and the cause or causes of such death or deaths.

(8) The jury may return a verdict by a majority of its number at any time not less than one hour after it has been enclosed.

(9) Each juror empanelled at any inquiry under this Act shall be entitled to remuneration at the rate of five shillings for each day, or part of a day, during which he has served as a juror, and travelling expenses. Such remuneration shall be payable by the sheriff clerk, and shall be recoverable by him from the county council as a charge upon the general purposes rate, where the inquiry relates to a death from an accident which has taken place in a county, including any police burgh therein, and from the burgh commissioners or other municipal authority of a Royal or Parliamentary burgh, as a charge upon the burgh general assessment, or, where there is no burgh general assessment, upon the police assessment, where the inquiry relates to a death from an accident which has taken place in a burgh.

(10) The jury shall be cited by the sheriff clerk from the sheriff court jury book in the manner provided by statute for the citation of jurors in civil cases in Scotland, and the existing statutory provisions relative to fines for non-attendance of jurors, and to the swearing of jurors, shall apply to inquiries under this Act.

V.—(1) At the inquiry, which shall be open to the public, the procurator-fiscal, or, in the event of his being unable to attend personally from any cause stated in open court, and held by the sheriff to be sufficient, his duly qualified depute, shall adduce evidence, including such medical or skilled evidence as

he deems expedient, in regard to the cause or causes of the death or deaths, and the circumstances of the accident.

(2) It shall be competent to the sheriff, at, or at any time subsequent to, the presentation of such petition—

(a) to grant warrant to officers of the law to take possession of, and to hold in safe custody, subject to the inspection of parties interested, any article or thing which it may be considered necessary to produce at the inquiry; and

(b) to inspect, either with or without the jury, or to grant warrant for the inspection by any person he may deem expedient, of any premises, machinery, or other thing, the inspection of which is or may, in his opinion, be material for the purposes of the inquiry.

(3) It shall be competent to the wife or husband, and to the relatives, and to the employer or employers, of any person who has lost his life in the accident, and in the case of an accident in or about a mine to an inspector of mines, and in the case of an accident in a factory or workshop to an inspector of factories and workshops, as also to any person or persons engaged under the same employers as such person, and to any other person or persons whom the sheriff may consider to have a just interest in the inquiry, to appear at, and take part in, and adduce evidence at, such inquiry, either by themselves or by counsel or agents, or by any other person or persons whom the sheriff may allow to appear on their behalf.

(4) The evidence adduced at such inquiry shall be taken on oath, the witnesses shall be subject to cross-examination, and the inquiry shall be conducted as nearly as possible in accordance with the ordinary procedure in a trial by jury before the sheriff court. Provided that the examination of any person as a witness or haver at such inquiry shall not be a bar to criminal proceedings being afterwards taken against such person. Provided further, that no witness at such inquiry shall be compellable to answer any question tending to show that he is guilty of any crime or offence. The evidence shall be taken down in writing under the control and supervision of the sheriff, and as he shall direct, either at length or in shorthand, which shall afterwards be written out, and it shall in either case be duly authenticated as correct.

(5) The verdict shall be recorded in the sheriff court books, and the procurator-fiscal shall obtain from the sheriff clerk a copy of the petition, as also the recorded evidence of the witnesses, or a copy thereof, and any reports or productions which may have been made in the course of the inquiry, or copies thereof, in so far as the same are in writing, and a copy of the verdict, and shall transmit the same, together with



the usual schedule for the registrar of deaths, to the Crown agent. The sheriff clerk shall also transmit copies of the petition, and of the recorded evidence, and of any reports which may have been made, in the case of an accident in or about a mine to the inspector of mines for the district, and in the case of an accident in a factory or workshop to the inspector of factories and workshops for the district, and copies shall also be obtainable by any person having an interest in the inquiry, upon such reasonable payment to defray the cost thereof as the sheriff shall fix.

(6) Every person attending such inquiry as a witness or haver on citation by the procurator-fiscal shall be allowed such expenses as are paid to any person attending a criminal trial by jury in the sheriff court on such citation.

VI. Nothing in this Act contained shall alter or affect the existing law and practice relative to the duties of procurators-fiscal to inquire and report to the Crown agent in regard to cases of death from accident, or relative to any powers at present vested in the Lord Advocate to cause public inquiries to be held, or the existing law or practice with reference to criminal proceedings against any person or persons criminally responsible for any death, nor shall the verdict returned at an inquiry under this Act be competent to be given in evidence or to be founded on in any subsequent judicial proceeding, civil or criminal, arising out of the same accident.

VII. In this Act, unless the context otherwise requires—

“Industrial employment or occupation” shall mean employment or occupation for or in the performance of any manual labour, or the superintendence of any such labour, or the working, management, or superintendence, of machinery or other appliances, or animals used in the prosecution of any work.

The expression “sheriff clerk” shall include sheriff clerk depute.

The expression “procurator-fiscal” shall mean the procurator-fiscal of a county or of a district, and shall include the procurators-fiscal of the county of the city of Edinburgh, and of the city and burgh of Aberdeen.

The expression “county” shall extend to the limits within which the sheriff has jurisdiction, whether by statute or at common law.

The expression “district” shall mean any part of a county for which a separate procurator-fiscal is appointed, and shall include any county or combination of counties, or parts of counties, for which one sheriff court and one procurator-fiscal are appointed.



## CHAPTER IV.—MINES AND QUARRIES

2. THE COAL MINES REGULATION ACT, 1887 (50 & 51  
VICT. C. 58)

III. This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fireclay; and in this Act, unless the context otherwise requires, the word "mine" means a mine to which this Act applies.

XXXV.—(1) Where in or about any mine, whether above or below ground, either—

(i.) Loss of life or any personal injury whatever to any person employed in or about the mine occurs by reason of any explosion of gas or of any explosive, or of any steam boiler; or

(ii.) Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever,

the owner, agent, or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident, and of the loss of life or personal injury occasioned thereby, to the inspector of the district on behalf of a Secretary of State, and shall specify in the notice the character of the explosion or accident, and the number of persons killed or injured respectively.

(2) Where loss of life or serious personal injury has immediately resulted from an explosion or accident, the place where the explosion or accident occurred shall be left as it was immediately after the explosion or accident, until the expiration of at least three days after the sending of such notice as aforesaid of such explosion or accident, or until the visit of the place by an inspector, whichever first happens, unless compliance with this enactment would tend to increase or continue a danger, or would impede the working of the mine.

(3) Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State, within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager.

(4) Every owner, agent, or manager who fails to act in

compliance with this section shall be guilty of an offence against this Act.

XLI. An inspector under this Act shall have power to do all or any of the following things ; namely—

- (i.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine.
- (ii.) To enter, inspect, and examine any mine, and every part thereof, at all reasonable times, by day and night, but so as not to impede or obstruct the working of the mine.
- (iii.) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine, or any mine contiguous thereto, or the care and treatment of the horses and other animals used in the mine.
- (iv.) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner, agent, and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act, in relation to the mine, shall be guilty of an offence against this Act.

XLIV. Where in any mine an explosion, or accident has caused loss of life or personal injury to any person, a Secretary of State may at any time direct an inspector to make a special report with respect to the explosion or accident.

XLV. Where it appears to a Secretary of State that a formal investigation of any explosion or accident, and of its causes and circumstances, is expedient, the Secretary of State may direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect:—

- (1) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation.
- (2) The person or persons so appointed (hereinafter called the court) shall hold the investigation in open court, in such manner and under such conditions as the

court may think most effectual for ascertaining the causes and circumstances of the explosion or accident, and enabling the court to make the report in this section mentioned.

- (3) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers; namely—
- (a) Power to enter and inspect any place or building, the entry or inspection whereof appears to the court requisite for the said purpose;
  - (b) Power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make;
  - (c) Power to require the production of all books, papers, and documents which it considers important for the said purpose;
  - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination.
- (4) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of Her Majesty's superior courts, who, on request, signed by the court, shall ascertain and certify the proper amount of the expenses.
- (5) The court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the explosion or accident and its circumstances, and adding any observations which the court thinks right to make.
- (6) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.
- (7) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled



tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document, shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

XLVI. The Secretary of State may cause any special report of an inspector or any report of a court under this part of this Act to be made public at such time and in such manner as he may think fit.

LXI.—(1) All offences under this Act not declared to be misdemeanours, and all fines under this Act, and all money and costs by this Act directed to be recovered as fines, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

LXVII. In Scotland the following provisions shall have effect :—

- (1) The court of summary jurisdiction when hearing and determining an information or complaint shall be the sheriff;
- (2) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court;
- (3) Every person found liable under this Act by a court of summary jurisdiction in any fine, or to pay any money or costs by this Act directed to be recovered as fines, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K of the Summary Procedure Act, 1864.

LXX. Where a fine is imposed under this Act for neglecting to send a notice of any explosion or accident, or for any offence against this Act which has occasioned loss of life or personal injury, a Secretary of State may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by the explosion, accident, or offence, or among some of them.

Provided that—

- (i.) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence;



- (ii.) The fact of the payment or distribution shall not in anyway affect or be receivable as evidence in any legal proceeding relative to or consequential on the explosion, accident, or offence.

LXXV. In this Act, unless the context otherwise requires,—

“Mine” includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine;

“Shaft” includes pit;

“Owner,” when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability;

“Agent,” when used in relation to any mine, means any person appointed as the representative of the owner in respect of any mine, or of any part thereof, and as such superior to a manager appointed in pursuance of this Act;

“Secretary of State” means one of Her Majesty’s principal Secretaries of State.

LXXVI. In the application of this Act to Scotland—

- (5) The term “sheriff” includes sheriff-substitute;
- (6) The term “attending on subpœna before a court of record” means attending on citation the Court of Justiciary;
- (7) The auditor of the sheriff court of the county or district of a county in which any inquiry takes place shall perform the duties of a master of one of the superior courts under this Act;
- (8) “County court judge, police magistrate, stipendiary magistrate, recorder, or registrar of a county court” means a sheriff or sheriff-substitute;
- (9) Notices of explosions, accidents, loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate.

### 3. THE METALLIFEROUS MINES REGULATION ACT, 1872 (35 & 36 VICT. C. 77)

III. This Act shall apply to every mine of whatever description other than a mine to which the Coal Mines Regulation Act, 1872, applies. [*N.B.*—The regulating Act is now the Coal Mines Regulation Act, 1887.]

*Note.*—The other sections referred to in the book are 11, 17, 20, 38, 41, and 42; but it is unnecessary to print them, as they are identical in terms with the corresponding sections of the Coal Mines Regulation Act, 1887.

### 4. THE QUARRIES ACT, 1894 (57 & 58 VICT. C. 42)

I. This Act shall apply to every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep.

II.—(1) The provisions of the Metalliferous Mines Regulation Acts, 1872 and 1875 . . . specified in the schedule to this Act, shall, subject to the modifications therein specified, apply in the case of every quarry under this Act in like manner as they apply in the case of a mine.

II. The inspectors under the Metalliferous Mines Regulation Acts, 1872 and 1875, shall be inspectors of the quarries under this Act.

[In the schedule, section 11 is applied with the substitution of “explosive” for “powder,” and section 22 without modification.]

### 5. NOTICE OF ACCIDENT IN MINES AND QUARRIES, AND WORKS CONNECTED WITH THEM

ACCIDENT, No. \_\_\_\_\_ 189\_\_

(*Number to be filled in by the Inspector.*)

I give particulars as follows of an accident which has occurred at this\* \_\_\_\_\_

(\* Say whether Mine or Quarry.)

1. Name of Mine or  
Quarry . . .

County . . .

2. Name and Postal Address of Owner (Occupier) . . . . .

[illegible]

(Signed) \_\_\_\_\_, Owner, Agent, or Manager.

Date\_\_\_\_\_189\_\_\_\_.

To \_\_\_\_\_, H.M. Inspector of Mines.

## CHAPTER V.—FACTORIES AND WORKSHOPS

## 6. THE FACTORY AND WORKSHOP ACT, 1878 (41 VICT. C. 16), AS AMENDED BY 58 &amp; 59 VICT. C. 37

XXXII. Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or a workshop, he shall with the least possible delay proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send to the inspector a report thereof.

The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector, and shall also have power to enter any room in a building to which the person killed or injured has been removed.

There shall be paid to the said surgeon for the investigation such fee, not exceeding ten nor less than three shillings, as a Secretary of State considers reasonable, which fee shall be paid as expenses incurred by a Secretary of State in the execution of this Act.

LXVIII. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things; namely—

- (1) To enter, inspect, and examine, at all reasonable times by day and night, a factory and a workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and
- (2) To take with him in either case a constable into a factory or workshop in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and
- (3) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and
- (4) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and



- (5) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and
- (6) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been, within the preceding two months, employed in a factory or workshop, and to require such person to be so examined, and to sign a declaration of the truth of the matters respecting which he is so examined; and
- (7) To exercise such other powers as may be necessary for carrying this Act into effect.

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

LXXI. Where there is no certifying surgeon resident within three miles of a factory or workshop, the poor law medical officer shall be for the time being the certifying surgeon under this Act for such factory or workshop.

LXXII. Subject to such regulations as may be from time to time made by a Secretary of State, an inspector may from time to time appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may from time to time revoke any such appointment.

Every appointment and revocation of appointment of a certifying surgeon may be annulled by a Secretary of State upon appeal to him for that purpose.

A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

A Secretary of State may from time to time make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

XCIII. The expression "textile factory" in this Act means—

any premises wherein, or within the close or curtilage of which, steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident

to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories.

The expression "non-textile factory" in this Act means—

- (1) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act;
- (2) also any premises or places named in Part Two of the said schedule wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there;
- (3) also any premises wherein, or within the close or curtilage or precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say,
  - (a) in or incidental to the making of any article or of part of any article, or
  - (b) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or
  - (c) in or incidental to the adapting for sale of any article,and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

The expression "factory" in this Act means textile factory and non-textile factory, or either of such descriptions of factories.

The expression "workshop" in this Act means—

- (1) any premises or places named in Part Two of the Fourth Schedule to this Act which are not a factory within the meaning of this Act,
- (2) also any premises, room, or place, not being a factory within the meaning of this Act, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say,
  - (a) in or incidental to the making of any article or of part of any article, or

- (b) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or
- (c) in or incidental to the adapting for sale of any article,

and to which or over which premises, room, or place the employer of the persons working therein has the right of access or control.

A part of a factory or workshop may for the purposes of this Act be taken to be a separate factory or workshop ; and a room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

Any premises or place shall not be excluded from the definition of a factory or workshop by reason only that such premises or place are or is in the open air.

This Act shall not apply to such workshops, other than bakehouses, as are conducted on the system of not employing any child, young person, or woman therein, but save as afore-said applies to all factories and workshops as before defined, inclusive of factories and workshops belonging to the Crown ; provided that in case of any public emergency a Secretary of State may exempt a factory or workshop belonging to the Crown from this Act to the extent and during the period named by him.

CV. In the application of this Act to Scotland—

- (4) The expression “poor law medical officer” means the medical officer appointed by the parochial board.

## FOURTH SCHEDULE

### LIST OF FACTORIES AND WORKSHOPS

#### PART ONE

##### *Non-Textile Factories*

(1) “Print works,” that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper ;



(2) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on;

(3) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles;

(4) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood;

(5) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps;

(6) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges;

(7) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power;

(8) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting;

(9) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;

(10) "Copper mills";

(11) "Iron mills," that is to say, any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel;

(12) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons, and as subsidiary to the repair or completion of some other work;



(13) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha;

(14) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on;

(15) "Glass works," that is to say, any premises in which the manufacture of glass is carried on;

(16) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on;

(17) "Letterpress printing works," that is to say, any premises in which the process of letterpress printing is carried on;

(18) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on;

(19) Flax scutch mills.

## PART TWO

### *Non-Textile Factories and Workshops*

(20) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on;

(21) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power;

(22) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived;

(23) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works, as hereinbefore defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power;

(24) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired;

(25) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals;

(26) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.

7. THE FACTORY AND WORKSHOP ACT, 1891 (54 & 55  
VICT. C. 75), AS AMENDED BY 58 & 59 VICT. C. 37

XXII.—(1) In section thirty-one of the principal Act . . .

(2) The notice required shall, where the person killed or injured is not removed to his own residence, state both his residence and the place to which he has been removed.

8. THE FACTORY AND WORKSHOP ACT, 1895 (58 & 59  
VICT. C. 37)

XVIII. For section thirty-one of the principal Act the following section shall be substituted, namely—

(1) Where there occurs in a factory or workshop any accident which either—

(a) causes loss of life to a person employed in the factory or in the workshop; or

(b) causes to any person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work,

written notice shall forthwith be sent to the inspector for the district.

(2) If the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten lead or other substance, or by explosion or escape of gas, steam, or metal, then, unless notice thereof is required by section sixty-three of the Explosives Act, 1875, to be sent to a Government inspector, notice thereof shall forthwith be sent to the certifying surgeon of the district.

(3) The notice shall state the residence of the person killed or injured, and the place to which he has been removed.

(4) If any notice required by this section to be sent with

respect to an accident in a factory or workshop is not so sent, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5) If any accident to which this section applies occurs to a person employed in an iron mill or blast furnace, or other factory or workshop, where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

(6) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

XX.—(1) Every occupier of a factory or workshop shall keep a register of accidents, and shall enter therein every accident occurring in the factory or workshop of which notice is required by the Factory Acts, within one week after the occurrence of the accident, and this register shall be at all times open to inspection by the inspector and by the certifying surgeon for the district.

(2) If any occupier of a factory or workshop makes default in complying with the requirements of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

XXI.—(1) Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop, and its causes and circumstances, is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the provisions of sections forty-five and forty-six of the Coal Mines Regulation Act, 1887, shall have effect, except that references to the said Act in the said section forty-five shall be construed as references to the Factory Acts.

(2) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

XXII.—(1) (iv.) So far as regards accidents, the Factory Acts shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop.

XXIII.—(1) The following provisions, namely—

(ii.) The provisions of the Factory Acts with respect to accidents ;

(iii.) Section sixty-eight of the principal Act with respect to the powers of inspectors,  
shall have effect as if—



- (a) every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process; and
- (b) any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building,

were included in the word factory, and the purpose for which the machinery is used were a manufacturing process, and as if the person who by himself, his agents, or workmen temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery, shall be deemed to be the occupier of a factory.

(2) The provisions of this Act with respect to notice of accidents and the formal investigation of accidents shall have effect as if—

- (a) any building which exceeds thirty feet in height, and which is being constructed or repaired by means of a scaffolding; and
- (b) any building which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages,—

were included in the word “factory”; and as if, in the first case, the employer of the persons engaged in such construction or repair, and, in the second case, the occupier of the building, were the occupier of a factory.

## 9. NOTICE OF ACCIDENT UNDER FACTORY AND WORKSHOP ACTS, 1878-1895

1. { Name of the Factory or Workshop \_\_\_\_\_  
 { Name and address of Occupier (Firm or Company) \_\_\_\_\_
2. Nature of Industry \_\_\_\_\_
3. { Date and hour of Accident \_\_\_\_\_  
 { Time injured person commenced work on day of Accident \_\_\_\_\_



4. Name of injured person \_\_\_\_\_
5. Age of injured person \_\_\_\_\_  
(If between 13 and 14 state whether working as child or young person.)
6. Sex of injured person \_\_\_\_\_
7. Occupation of injured person \_\_\_\_\_
8. By what part of machinery }  
in motion, or in what }  
other way the accident }  
was caused, and how the }  
injured person was em- }  
ployed at the time of the }  
accident }
9. Residence of injured person \_\_\_\_\_
10. Place to which injured person has been removed \_\_\_\_\_

Signature of Occupier, Manager or Agent\_\_\_\_\_

Date \_\_\_\_\_

10. CERTIFYING SURGEON'S REPORT OF ACCIDENT  
UNDER FACTORY AND WORKSHOP ACTS, 1878-  
1895

ACCIDENT No. \_\_\_\_\_ 189 \_\_\_\_\_

(Number to be filled in by Inspector.)

1. { Name of the Factory or Workshop \_\_\_\_\_  
 { Name and address of Occupier (Firm or Company) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
2. Nature of Industry \_\_\_\_\_
3. { Date and hour of Accident \_\_\_\_\_  
 { Time injured person commenced work on day of Accident \_\_\_\_\_

4. Name of injured person \_\_\_\_\_
5. Age \_\_\_\_\_  
(If between 13 and 14 state whether working as child or young person.)
6. Sex of injured person \_\_\_\_\_
7. Occupation of injured person \_\_\_\_\_
8. By what part of machinery  
in motion, or in what  
other way the accident  
was caused, and how the  
injured person was em-  
ployed at the time of the  
accident? <sup>1</sup> \_\_\_\_\_
9. Degree of injury (slight or severe) \_\_\_\_\_
10. Nature of injury according  
to classification on op-  
posite page } \_\_\_\_\_

Further observations \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I received notice of the above accident on the \_\_\_\_\_  
day of \_\_\_\_\_

I investigated at the Works the cause of the above accident  
on the \_\_\_\_\_ day of \_\_\_\_\_ and  
believe the facts to be as above stated.

The evidence of the injured person was taken by me on the  
\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

<sup>1</sup> Further particulars may be added on the next page.

The distance of the above Works from my central point is \_\_\_\_\_ miles, and the distance from the Works to the place where the injured person was examined is \_\_\_\_\_ miles.

In making the investigation now reported, the distance I have had to travel, calculated according to the annexed instructions, is \_\_\_\_\_ miles; and the Fee to which I am entitled by the Scale is \_\_\_\_\_

*Signature of Certifying Surgeon* \_\_\_\_\_

*Address* \_\_\_\_\_

SCALE OF FEES TO BE PAID TO CERTIFYING SURGEONS FOR INVESTIGATING AND REPORTING ACCIDENTS, SANCTIONED BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

1. For the examinations and report on any Accident which do not require the Surgeon to travel a greater distance than one mile;—a Fee of Three Shillings.
2. For the examinations and report on any Accident which may require the Surgeon to travel more than one mile, and not more than two miles;—Four Shillings.
3. For the examinations and report on any Accident which may require the Surgeon to travel more than two and not more than three miles;—Five Shillings.
4. And in addition for every half-mile beyond three miles;—Sixpence.
5. But no Fee shall exceed the sum of—Ten Shillings.
6. Where a Surgeon reports three Accidents arising from the same cause which he inquired into on the same day, he shall be allowed the full Fee for one report, and Three Shillings for each of the other reports, and where there are more than three Accidents a Fee of Three Shillings only for each report.
7. If from the notice sent to the Surgeon he might reasonably suppose that the Accident was properly reportable, and on investigation it proves not to be so, he shall be allowed the Fee, having had reasonable cause to make the inquiry.

*Regulations under which Distances are to be calculated*

“ The Scale of remuneration, which is calculated on distance from residence, should be held to apply to that distance which

a Surgeon is compelled to travel to make the examinations, taking the shortest way in his power."

The distance is to be measured by the shortest route by which the Surgeon can travel, and refers ONLY to that which a Surgeon has to pass over in proceeding *to* the Works, together with any ADDITIONAL distance which he may have to travel to examine the person injured. The distance which he has travelled in *returning* either from the investigation at the Works, or from the examination of the person injured, is NOT to be added to the mileage; nor must the distance travelled to the place where the injured person is examined be added, unless the Surgeon had to travel a greater distance than he would have done in returning from the investigation at the Works direct to his residence.

*Instructions for filling up the Form of Report on the other side*

In every case, where practicable, the evidence of the injured person (if living) should be taken, and, when necessary, that of one or more eye-witnesses of the accident. When an injured person has been moved to a considerable distance from his home, it will be unnecessary for the Certifying Surgeon to follow such person, if evidence relating to the accident can be procured at the factory or workshop.

The nature of the injury should be clearly described under one or other of the heads in the following classification:—(a) Causing death. (b) Loss of right hand or arm. (c) Loss of left hand or arm. (d) Loss of part of right hand. (e) Loss of part of left hand. (f) Loss of any part of leg or foot. (g) Fracture of limbs or bones of trunk. (h) Fracture of hand or foot. (i) Loss of sight of one or both eyes. (j) Injuries to head and face. (k) Burns and scalds. (l) Lacerations, contusions, and other injuries not enumerated above. The cause of the accident should also be clearly and fully described, that it may be ascertained from what part of machinery in motion it was caused, whether it arose from machinery not being sufficiently guarded, or while working between the fixed and traversing parts of a self-acting machine. The names of such persons as may have given important evidence relative to the cause and nature of the accident should be stated.

In cases where a Surgeon has to proceed a greater distance than three miles, the distance travelled must be stated in *half* miles, as  $3\frac{1}{2}$ , 4,  $4\frac{1}{2}$  miles, and so on.



## CHAPTER VI.—EXPLOSIVES

## 11. THE EXPLOSIVES ACT, 1875 (38 VICT. c. 17)

III. This Act shall apply to gunpowder and other explosives as defined by this section.

The term "explosive" in this Act—

- (1) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (2) Includes fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

LV. A Government inspector shall have power to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose—

- (1) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times, by day and night, but so as not to unnecessarily impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act and all matters and things relating to the safety of the public or of the persons employed in or about such factory, magazine, or store; and
- (2) He may enter, inspect, and examine any premises registered under this Act, and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day; and
- (3) He may require the occupier of any factory, magazine, store, or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosive or ingredients of an explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which the inspector believes to be an explosive, or such ingredients or substance.

The occupier of every such factory, magazine, store, and registered premises, his agents and servants, shall furnish the means required by the inspector as necessary for every such entry, inspection, examination, and inquiry.

Any person who fails to permit a Government inspector to enter, inspect, examine, or make inquiries in pursuance of this section, or to comply with any requisition of such inspector in pursuance of this section, or who in any manner obstructs such inspector in the execution of his duties under this Act, shall be liable to a penalty not exceeding one hundred pounds for each offence.

LXIII. Whenever there occurs any accident by explosion or by fire in or about or in connection with any factory, magazine, or store, or any accident by explosion or by fire, causing loss of life or personal injury in or about or in connection with any registered premises, the occupier of such factory, magazine, store, or premises shall forthwith send or cause to be sent notice of such accident and of the loss of life or personal injury (if any) occasioned thereby, to the Secretary of State. A notice of any accident of which notice is sent in pursuance of this section to a Government inspector need not be sent to any inspector or sub-inspector of factories or any inspector of mines.

Where in, about, or in connection with any carriage, ship, or boat, either conveying an explosive, or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire causing loss of life or personal injury, or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the prescribed amount, any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein or being loaded or unloaded therefrom, or one of them, shall forthwith send or cause to be sent notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby, to the Secretary of State.

Every such occupier, owner, or master as aforesaid who fails to comply with this section shall be liable to a penalty not exceeding twenty pounds.

LXVI. The Secretary of State may direct an inquiry to be made by a Government inspector into the cause of any accident which is caused by an explosion or fire either in connection with any explosive, or of which notice is required by this Act to be given to the Secretary of State, and where it appears to the Secretary of State, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances

attending the same, is expedient, the Secretary of State may by order direct such investigation to be held, and with respect to such inquiry and investigation the following provisions shall have effect :—

- (1) The Secretary of State may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist the Government inspector in holding the formal investigation, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of a Government inspector or any other assessor or assessors named in the order ;
- (2) The persons holding any such formal investigation (in this section referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned ;
- (3) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of a Government inspector under this Act, and in addition the following powers ; namely—
  - (a) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose ;
  - (b) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make ;
  - (c) They may require the production of all books, papers, and documents which they consider important for the said purpose ;
  - (d) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination ;
  - (e) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record ; and in case of dispute as to the



amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses ;

- (4) The Government inspector making an inquiry into any accident, and the court holding an investigation of any accident under this section, shall make a report to the Secretary of State, stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the inquiry or investigation which he or they think right to make, to the Secretary of State, and the Secretary of State shall cause every such report to be made public in such manner as he thinks expedient ;
- (5) All expenses incurred in and about an inquiry or investigation under this section shall be deemed to be part of the expenses of the Secretary of State in carrying this Act into execution ; and
- (6) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this Act, or prevents or impedes such court in the execution of their duty, shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document, not exceeding ten pounds during every day that such failure continues.

LXXXV. All orders, permissions, notices, and documents issued or given by the Secretary of State for the purposes of this Act, and all notices under this Act, shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served, given, or sent by, on, or to a Government inspector or Secretary of State may be sent by post, by a prepaid letter, and if sent by post shall be deemed to have been served, given, and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service, giving, or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put into the post.

All notices and documents directed by or required for the purposes of this Act to be given or sent to the Secretary of State



shall, if sent to a Government inspector under this Act, be deemed to have been sent to the Secretary of State.

XCVII. This Act shall not apply—

(1) To any factory, magazine, store, premises, wharf, place, or explosive under the control of a Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or otherwise held for the service of the Crown, or to the manufacture, keeping, or importation of such explosive; or

(2) To any of Her Majesty's ships, boats, or earriages.

CIV. Her Majesty may, by Order in Council, declare that any substance which appears to Her Majesty to be specially dangerous to life or property, by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the order) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

CVIII. In this Act, unless the context otherwise requires—

The expression "this Act" includes any licence, certificate, byelaw, regulation, rule, and order granted or made in pursuance of this Act;

The expression "existing" means existing at the passing of this Act;

The expression "person" includes a body corporate;

The expression "occupier" includes any number of persons and a body corporate; and in the case of any manufacture or trade, includes any person carrying on such manufacture or trade;

The expression "master" includes every person (except a pilot) having command or charge of a ship, and in reference to any boat belonging to a ship, means the master of the ship; and when used in reference to any other boat, includes every person having command or charge of such boat;

The expression "magazine" includes any ship or other vessel used for the purpose of keeping any explosive:

The expression "factory magazine" means a building for keeping the finished explosive made in the factory, and includes, if such explosive is not gunpowder, any building for keeping the partly manufactured explosive or the ingredients of such explosive which is mentioned in that behalf in the licence;

The expression "store" means an existing gunpowder store as defined by this Act, or a place for keeping an explo-

sive licensed by a licence granted by a local authority under this Act;

The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State;

The expression "wharf" includes any quay, landing-place, siding, or other place at which goods are landed, loaded, or unloaded;

The expression "carriage" includes any earriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled;

The expression "ship" includes every description of vessel used in sea navigation, whether propelled by oars or otherwise;

The expression "boat" means every vessel not a ship as above defined which is used in navigation in any inland water or any harbour, whether propelled by oars or otherwise;

This Act shall apply to Scotland, with the following modifications; that is to say,

CIX. In this Act with respect to Scotland—

- (2) The expression "a master of one of the superior courts" means the auditor of the Court of Session;
- (4) The expression "attending before a court of record" means attending on citation the Court of Justiciary;
- (5) The expression "stipendiary magistrate" means a sheriff or sheriff-substitute;
- (10) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

## 12. LIST OF EXPLOSIVES UNDER THE EXPLOSIVES ACT, 1875, ISSUED BY THE HOME OFFICE, 1ST JANUARY 1897

PART A. of the following List of Explosives is deemed to be the List of Authorised Explosives in force for the time being, in substitution for all such Lists of an earlier date.

### PART A.—AUTHORISED EXPLOSIVES

[*Note.*—The Official List contains the definition of *each explosive*. As these definitions occupy much space, and are not relevant to the subject of this book, they have been omitted. Any reader desirous of obtaining further information will obtain it from a full copy of the List, which is published by H.M. Stationery Office. The price is sixpence.]

The following explosives are at present authorised for manufacture in, or importation into, the United Kingdom—

#### CLASS 1.—GUNPOWDER

The term “gunpowder” means exclusively gunpowder ordinarily so called.

#### CLASS 2.—NITRATE MIXTURE

The term “nitrate mixture” means any preparation, other than gunpowder ordinarily so called, formed by the mechanical mixture of a nitrate with any form of carbon or with any carbonaceous substance not possessed of explosive properties, whether sulphur be or be not added to such preparation, and whether such preparation be or be not mechanically mixed with any other non-explosive substance.

- |                              |                            |
|------------------------------|----------------------------|
| 1. Chilworth Special Powder. | 4. Fortis Explosive No. 1. |
| 2. Dahmenite A.              | 5. Safety Blasting Powder. |
| 3. Electronite No. 2.        | 6. Westfalite.             |

#### CLASS 3.—NITRO-COMPOUND

The term “nitro-compound” means any chemical compound possessed of explosive properties, or capable of combining with metals to form an explosive compound, which is produced by the chemical action of nitric acid (whether mixed or not with sulphuric acid) or of a nitrate mixed with sulphuric acid upon any carbonaceous substance, whether such compound is mechanically mixed with other substances or not.

The nitro-compound class has two divisions.

##### *Division 1*

Division 1 comprises the following explosives and any chemical compound or mechanically mixed preparation which consists either wholly or partly of nitro-glycerine or of some other liquid nitro-compound.

- |                             |                              |
|-----------------------------|------------------------------|
| 1. Amberite No. 1.          | 12. Dynamite No. 2.          |
| 2. Ardeer Powder.           | 13. Forcite.                 |
| 3. Ballistite.              | 14. Gelatine Dynamite No. 1. |
| 4. Blasting Gelatine No. 1. | 15. Gelatine Dynamite No. 2. |
| 5. Blasting Gelatine No. 2. | 16. Kynite.                  |
| 6. Blasting Matagnite.      | 17. Lithofracteur.           |
| 7. Camphorated Gelatine.    | 18. Matagnite Gelatine.      |
| 8. Carbo-Dynamite.          | 19. Oarite.                  |
| 9. Carbonite.               | 20. Primers for Gelatines.   |
| 10. Cordite.                | 21. Stonite.                 |
| 11. Dynamite No. 1.         |                              |

*Division 2*

Division 2 comprises the following explosives and any nitro-compound (as before defined) which is not comprised in the first division.

- |                                                        |                                        |
|--------------------------------------------------------|----------------------------------------|
| 1. Amberite No. 2.                                     | 27. Pigou's Sporting Smokeless Powder. |
| 2. Ammonite.                                           | 28. Potentite.                         |
| 3. Bellite.                                            | 29. Rifleite.                          |
| 4. Blasting Amberite.                                  | 30. Rifle Gun-cotton.                  |
| 5. B. N. Powder.                                       | 31. Roburite No. 1.                    |
| 6. Cannonite No. 1.                                    | 32. Roburite No. 2.                    |
| 7. Cannonite No. 2.                                    | 33. Roburite No. 3.                    |
| 8. Chilworth Smokeless Sporting Powder.                | 34. Rosslyn Smokeless Powder No. 1.    |
| 9. Collodion Cotton.                                   | 35. Rosslyn Blastite.                  |
| 10. Cooppal's Powder.                                  | 36. Sawdust and Gun-cotton Powder.     |
| 11. C. L. Powder.                                      | 37. Sehultze Gunpowder.                |
| 12. Di-flamyr.                                         | 38. Schultze Blasting Powder           |
| 13. E. C. Sporting Powder.                             | 39. Smokeless Powder.                  |
| 14. E. C. Powder Company's Rifle Powder, J. B. Patent. | 40. Smokeless Blasting Powder.         |
| 15. Eleetronite No. 1.                                 | 41. Tonite or Cotton Powder No. 1.     |
| 16. Emerald Powder.                                    | 42. Tonite or Cotton Powder No. 2.     |
| 17. Faversham Powder.                                  | 43. Tonite or Cotton Powder No. 3.     |
| 18. Fortisine.                                         | 44. Troisdorf Smokeless Powder.        |
| 19. Gathurst Powder.                                   | 45. Von Forster's Smokeless Powder.    |
| 20. Gun-cotton.                                        | 46. Walsrode Powder.                   |
| 21. Greener's Powder.                                  |                                        |
| 22. Nitrated Gun-cotton.                               |                                        |
| 23. Normal Smokeless Powder.                           |                                        |
| 24. Normal Sporting Powder.                            |                                        |
| 25. Pierie Acid.                                       |                                        |
| 26. Pigou's Military Smokeless Powder.                 |                                        |

## CLASS 4.—CHLORATE MIXTURE

The term "ehlorate mixture" means any explosive containing a ehlorate.

The chlorate mixture class has two divisions—

*Division 1*

Division 1 comprises any ehlorate preparation which consists partly of nitro-glycerine or of some other liquid nitro-compound.

Nil.



*Division 2*

Division 2 comprises any chlorate mixture, as before defined, which is not comprised in the first division.

Nil.

## CLASS 5.—FULMINATE

The term “fulminate” means any chemical compound or mechanical mixture, whether included in the foregoing classes or not, which, from its great susceptibility to detonation, is suitable for employment in percussion caps or any other appliances for developing detonation, or which, from its extreme sensibility to explosion, and from its great instability (that is to say, readiness to undergo decomposition from very slight exciting causes), is especially dangerous.

This class consists of two divisions.

*Division 1*

Division 1 comprises such compounds as the fulminates of silver and of mercury, and preparations of these substances, such as are used in percussion caps; and any preparation consisting of a mixture of a chlorate with phosphorus, or certain descriptions of phosphorus compounds, with or without the addition of carbonaceous matter, and any preparation consisting of a mixture of a chlorate with sulphur, or with a sulphuret, with or without carbonaceous matter.

1. Fulminate of Mercury     |     2. Cap Composition.

*Division 2*

Division 2 comprises such substances as the chloride and the iodide of nitrogen, fulminating gold and silver, diazobenzol, and the nitrate of diazobenzol.

Nil.

## CLASS 6.—AMMUNITION

The term “ammunition” means an explosive of any of the foregoing classes when enclosed in any case or contrivance, or otherwise adapted or prepared so as to form a cartridge or charge for small arms, cannon, or any other weapon, or for blasting, or to form any safety or other fuze for blasting or for shells, or to form any tube for firing explosives, or to form a percussion cap, a detonator, a fog signal, a shell, a torpedo, a war rocket, or other contrivance other than a firework.

The term “percussion cap” does not include a detonator.

The term “detonator” means a capsule or case which is of such strength and construction, and contains an explosive of the fulminate-explosive class in such quantity that the ex-

plosion of one capsule or case will communicate the explosion to other like capsules or cases.

The term "safety fuze" means a fuze for blasting which burns and does not explode, and which does not contain its own means of ignition, and which is of such strength and construction and contains an explosive in such quantity that the burning of such fuze will not communicate laterally with other like fuzes.

The ammunition class has three divisions.

#### *Division 1*

- |                         |                               |
|-------------------------|-------------------------------|
| 1. Percussion Caps.     | 4. Safety Fuze.               |
| 2. Railway Fog Signals. | 5. Safety Firing-tubes No. 1. |
| 3. Safety Cartridges.   | 6. Tube Safety Fuze.          |

#### *Division 2*

Division 2 comprises any ammunition as before defined, which does not contain its own means of ignition, and is not included in Division 1.

- |                                                         |                                                    |
|---------------------------------------------------------|----------------------------------------------------|
| 1. Cartridges for Small Arms.                           | 14. Low Tension Electric Fuzes (No. 4 Definition). |
| 2. Cartridges for Cannon, Shells, Mines, Blasting, etc. | 15. Low Tension Electric Fuzes (No. 5 Definition). |
| 3. Abel's Electric Fuzes.                               | 16. Spon's Electric Fuzes.                         |
| 4. Bickford's Patent Volley-firers.                     | 17. Abel's Electric Tubes.                         |
| 5. Brain's Electric Fuzes.                              | 18. Elswick Electric Tubes.                        |
| 6. Electric Fuzes.                                      | 19. Electric Primers.                              |
| 7. Electric Fuzes (Smith's Patent).                     | 20. Fuzes for Shells.                              |
| 8. High Tension Electric Fuzes.                         | 21. German Spills.                                 |
| 9. High Tension Electric Fuzes (No. 2 Definition).      | 22. German Spills (No. 2 Definition).              |
| 10. High Tension Electric Fuzes (Brain's Patent).       | 23. Gun-cotton Fuzes.                              |
| 11. Low Tension Electric Fuzes.                         | 24. Gunpowder Fuzes.                               |
| 12. Low Tension Electric Fuzes (No. 2 Definition).      | 25. Instantaneous Fuze.                            |
| 13. Low Tension Electric Fuzes (No. 3 Definition).      | 26. Miners' Squibs.                                |
|                                                         | 27. Oven Blowers.                                  |
|                                                         | 28. Pain's Instantaneous Pyrotechnic Fuzes.        |
|                                                         | 29. Pettinger's Electric Fuzes.                    |
|                                                         | 30. Tubes for firing Explosives.                   |
|                                                         | 31. War Rockets.                                   |

*Division 3*

Division 3 comprises any ammunition as before defined which contains its own means of ignition, and is not included in Division 1.

- |                                               |                                                              |
|-----------------------------------------------|--------------------------------------------------------------|
| 1. Abel's Electric Detonator Fuzes.           | 11. Fuzes for Shell.                                         |
| 2. Bornhardt's Electric Detonator Fuzes.      | 12. High Tension Electric Detonator Fuzes.                   |
| 3. Brain's Electric Detonator Fuzes.          | 13. Low Tension Electric Detonator Fuzes.                    |
| 4. Cartridges for Small Arms.                 | 14. Low Tension Electric Detonator Fuzes (No. 2 Definition). |
| 5. Colliery Safety Lighters.                  | 15. Pettinger's Electric Detonator Fuzes.                    |
| 6. Detonators.                                | 16. Safety Firing Tubes No. 2.                               |
| 7. Electric Detonators.                       | 17. Spon's Electric Detonator Fuzes.                         |
| 8. Electric Detonator Fuzes (Smith's Patent). | 18. Tubes for firing Explosives.                             |
| 9. Electric Detonator Fuzes.                  |                                                              |
| 10. Elswick Mechanical Tubes.                 |                                                              |

## CLASS 7.—FIREWORK

The term "firework" comprises firework composition and manufactured fireworks.

*Division 1.—Firework Composition*

Firework composition, consisting of any chemical compound or mechanically mixed preparation of an explosive or inflammable nature, which is used for the purpose of making manufactured fireworks, and is not included in the former classes of explosives, and also any star and any coloured fire composition subject to the proviso hereinafter set forth.

*Division 2.—Manufactured Fireworks*

1. Manufactured fireworks, consisting of any explosive of the foregoing classes, and any firework composition, when such explosive or composition is enclosed in any case or contrivance, or is otherwise manufactured so as to form a squib, cracker, serpent, rocket (other than a war rocket), maroon, lance, wheel, Chinese fire, Roman candle, or other article specially adapted for the production of pyrotechnic effects or pyrotechnic signals, or sound signals. Provided that a substantially constructed and hermetically closed metal case containing not more than 1 lb. of coloured fire composition of such a nature as not to be

liable to spontaneous ignition shall be deemed to be a manufactured firework.

- |                               |                                |
|-------------------------------|--------------------------------|
| 2. Amorees.                   | 9. Socket Sound Signals.       |
| 3. Crack Shots.               | 10. Socket Distress Signals.   |
| 4. Distress Signal Rockets.   | 11. Sound Signal Rockets.      |
| 5. Incendiary Stars.          | 12. Socket Light Signals.      |
| 6. Incendiary Shells.         | 13. Snaps for Bonbon Crackers. |
| 7. Lightning Paper.           | 14. Throwdowns.                |
| 8. Magic Candle Pin Crackers. | 15. Very Signal Cartridge.     |

PART B.—Explosives which have passed the tests and therefore become licensable, but for which no licences have yet been taken out.

PART C.—Explosives which were at one time licensed for manufacture or importation, but for which no licences are at present in force.

[*Note*.—Looking to the purpose of this book, it seems unnecessary to print these two parts of the List.]

## CHAPTER VII.—DANGEROUS EMPLOYMENTS

### 13. THE NOTICE OF ACCIDENTS ACT, 1894 (57 & 58 VICT. C. 28), AS AMENDED BY 58 & 59 VICT. C. 37, S. 54

1.—(1) Where there occurs in any employment to which this section applies any accident which causes to any person employed therein either loss of life or such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work, his employer shall, as soon as possible, and, in case of an accident not resulting in death, not later than six days after the occurrence of the accident, send to the Board of Trade notice in writing of the accident, specifying the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which any such person was employed at the time of the accident, and, in the case of an injury, the nature of the injury.

(2) If any person wilfully makes default in complying with the requirements of this section he shall be liable on summary conviction to a fine not exceeding forty shillings.



(3) For the purpose of this section the expression "working day" shall mean a day on which the person injured would, but for the injury, be employed in his ordinary work.

II.—(1) Section one of this Act shall apply to the employments specified in the schedule to this Act.

(2) If the Board of Trade are of opinion that any other employment in which twenty persons or more, not being domestic servants, are employed by the same employer, is specially dangerous to life or limb, the Board may, by order, direct that section one of this Act shall apply to that employment, and thereupon, while the order is in force, that section shall apply accordingly.

(3) The Board of Trade may, by order, revoke or modify any order made under the foregoing powers, and modify or limit the application of section one of this Act to the employment specified in the schedule to this Act.

(4) The Board of Trade may also, by order, require any further particulars to be specified in the notice to be sent in pursuance of section one of this Act.

(5) Every order made under this section shall be notified in the *London Gazette* and in such other manner as may appear to the Board of Trade sufficient for giving publicity thereto, and shall be laid before both Houses of Parliament as soon as may be after it is made.

III. Where it appears to the Board of Trade that any accident involving loss of life or bodily injury is of sufficient importance to require a formal investigation of the accident, and of its causes and circumstances, the Board may by order direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect:—

(1) The Board may appoint a competent person to hold the investigation, and may appoint any person possessing legal, medical, or special knowledge to act as assessor in holding the investigation, and may assign to any such person such remuneration as the Board, with the approval of the Treasury, determine;

(2) The person appointed to hold the investigation (hereinafter called the court) shall hold the same in open court in such manner and under such conditions as the court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the court to make the report in this section mentioned;

(3) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under

the Railway Regulation Acts, 1840 to 1889, and in addition the following powers; namely—

- (a) Power to enter and inspect, or to authorise any person to enter and inspect, any place or building the entry or inspection whereof appears to the court requisite for the said purpose;
  - (b) Power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make;
  - (c) Power to require the production of all books, papers, and documents which it considers important for the said purpose;
  - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination;
- (4) Every person attending as a witness before the court, and not being the employer of the person killed or injured, or in the employment of that employer, shall be allowed such expenses as would be allowed to a witness attending before a court of record, and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of the Supreme Court, who on request signed by the court shall ascertain and certify the proper amount of the expenses;
- (5) The court holding an investigation under this section shall make a report to the Board of Trade, stating the causes of the accident and its circumstances, and adding any observations which the court thinks right to make, and the Board may cause any such report to be made public in such manner as the Board think fit;
- (6) The court may order any costs and expenses incurred in and about an investigation under this section (including any remuneration payable to any person appointed to hold the investigation or to act as assessor) to be paid by any person summoned before it, if it finds that the accident was due to the act or default or negligence of that person; and any such order shall, on the application of any person entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if the costs and expenses

were a penalty imposed by the court ; but subject to any such order such costs and expenses shall be deemed to be part of the expenses of the Board of Trade in the execution of this Act ;

- (7) If any person without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, he shall for every such offence be liable, on summary conviction, to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document, shall be liable, on summary conviction, to a fine not exceeding ten pounds for every day that such failure continues.

IV. The expenses of the Board of Trade in the execution of this Act shall be defrayed out of moneys to be provided by Parliament.

V. This Act shall apply in the case of accidents occurring to persons employed by a department of the Government, and in such cases the notice to be given by the employer shall be given by such person as the department by general rule direct.

VI. Nothing in this Act shall apply to any employment which is for the time being regulated by any Act of Parliament administered by the Secretary of State or by inspectors appointed by him, or shall require notice to be given of any accident of which notice is required by any other Act to be given to the Board of Trade.

VII. In the application of this Act to Scotland—

The expression “ court of summary jurisdiction ” shall mean the sheriff ;

The expression “ master of the Supreme Court ” shall mean the auditor of the Court of Session.

Every order made under this Act and required to be notified in the *London Gazette*, shall, if it relates to Scotland, be notified in the *Edinburgh Gazette*.

## SCHEDULE

1. Construction, use, working, or repair of any railway, tramroad, tramway, canal, bridge, tunnel, or other work authorised by any local or personal Act of Parliament.

3. Use or working of any traction engine or other engine or machine worked by steam in the open air.

14. FORM OF NOTICE UNDER NOTICE OF  
ACCIDENTS ACT, 1894

*Issued by the Board of Trade, November 1894*

Name of Employer\_\_\_\_\_

Employment (as specified in List on page 2) in which the  
Accident occurred—

|                                                                                 |  |
|---------------------------------------------------------------------------------|--|
| Time (Date and Hour)<br>and Place of occur-<br>rence of Accident.               |  |
| Probable Cause.                                                                 |  |
| Name, Residence, and<br>Occupation of any<br>Person killed or<br>injured.       |  |
| Nature of Work on<br>which employed at<br>the time of the<br>Accident.          |  |
| Whether killed or in-<br>jured; and if injured,<br>the Nature of the<br>Injury. |  |

Name\_\_\_\_\_

Position\_\_\_\_\_

Address\_\_\_\_\_

*of Person sending this Notice.*

Date of Notice\_\_\_\_\_



## CHAPTER VIII.—RAILWAYS

15 THE REGULATION OF RAILWAYS ACT, 1871  
(34 & 35 VICT. c. 78)

## II. In this Act—

The term “railway” means the whole or any portion of a railway or tramway, whether worked by steam or otherwise, which has been authorised by any special Act of Parliament, or by any certificate under Act of Parliament;

The term “company” means a company incorporated either before or after the passing of this Act for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom or parties to an agreement for working a railway in the United Kingdom;

The term “person” includes a body corporate;

The term “court of summary jurisdiction” means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff-substitute, or other magistrate, or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

III. The Board of Trade may from time to time appoint any person to be inspector for the purpose of inspecting any railway, and of making any inquiry with respect to any railway, or into the cause of any railway accident, which the Board of Trade are authorised to make or direct, and of enabling the Board of Trade to carry the provisions of any general Act relating to railways into execution, or for any of such purposes: Provided that no person so appointed shall exercise any powers of interference in the affairs of any company.

IV. Every inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Board of Trade to make or conduct, have the following powers; that is to say,

- (1) He may enter and inspect any railway, and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto;
- (2) He may by summons under his hand require the attend-

ance of any person who is engaged in the management, service, or employment of a company as defined by this Act, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make from such person or company ;

- (3) He may require and enforce the production of all books, papers, and documents of a company which he considers important for the said purpose.

VI. Where in or about any railway or any of the works or buildings connected with such railway, or any building or place, whether open or enclosed, occupied by the company working such railway, any of the following accidents takes place in the course of working any railway ; that is to say,

- (1) Any accident attended with loss of life or personal injury to any person whomsoever ;
- (2) Any collision where one of the trains is a passenger train ;
- (3) Any passenger train or any part of a passenger train accidentally leaving the rails ;
- (4) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused or to be likely to cause loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Board of Trade,

the company working such railway, and also, if the accident happen to a train belonging to any other company, such last-mentioned company, shall send notice of such accident and of the loss of life or personal injury (if any) occasioned thereby, to the Board of Trade.

Such notice shall be in such form and shall contain such particulars as the Board of Trade may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place.

The Board of Trade may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. Notice of every such order shall be sent to every railway company, and while it is in force notice of every accident of the class to which the order relates shall be sent to the Board of Trade by telegraph immediately after the accident takes place.

Every company who fail to comply with the provisions of this section shall be liable for each offence to a penalty not exceeding twenty pounds.

VII. The Board of Trade may direct an inquiry to be made

by an inspector into the cause of any accident, of which notice is for the time being required by or in pursuance of this Act to be sent to the Board of Trade; and where it appears to the Board of Trade, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Board of Trade may, by order, direct such investigation to be held, and with respect to such investigation the following provisions shall have effect:—

- (1) The Board of Trade may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist an inspector in holding the same, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of an inspector or any other assessor or assessors named in the order;
- (2) The persons holding any such formal investigation (hereinafter referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned;
- (3) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under this Act, and in addition the following powers; namely—
  - (a) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose;
  - (b) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make;
  - (c) They may require and enforce the production of all books, papers, and documents which they consider important for the said purpose;
  - (d) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination;



(e) Every person so summoned not being a person engaged in the management, service, or employment of a company, or otherwise connected with a company, shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses;

(4) The inspector making an inquiry into any accident, and the court holding an investigation of any accident, shall make a report to the Board of Trade stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Board of Trade, and the Board of Trade shall cause every such report to be made public in such manner as they think expedient.

XI. If any person, without reasonable excuse (proof whereof shall lie on him), does any of the following things; namely—

(1) Having been summoned, and having had the expenses (if any) to which he is entitled tendered to him, fails to attend as a witness before any inspector under this Act, or before a court holding an investigation under this Act, or fails when required by the inspector or such court in pursuance of this Act so to do, to make any answer, or to give any return, or to produce any document, or to make or sign any declaration; or

(2) Prevents or impedes the inspector or such court in the execution of his or their duty,

he shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a refusal to make any return or produce any document, not exceeding ten pounds during every day that such failure continues; and where the offence consists of preventing or impeding as aforesaid, the inspector, or any member of such court, or any person called by him to his assistance, may seize and detain the offender until he can be conveniently taken before a court of summary jurisdiction, to be dealt with according to law.

XV. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways



Clauses Consolidation (Scotland) Act, 1845 (as the case may require), are for the time being recoverable and applicable.

XVI. In the application of this Act to Scotland—

- (1) The term “attending on subpoena before a court of record” means attending on citation the Court of Justiciary.
- (2) The Queen’s and Lord Treasurer’s Remembrancer shall perform the duties of a master of one of the superior courts under this Act.
- (3) The term “stipendiary magistrate” means a sheriff or sheriff-substitute.

# 16. ORDER MADE BY THE BOARD OF TRADE IN PURSUANCE OF THE REGULATION OF RAILWAYS ACT, 1871, 34 & 35 VICT. c. 78, s. 6

Whereas by the 6th section of the Regulation of Railways Act, 1871, it is enacted that—[*Here follows the section.*]

Now, therefore, the Board of Trade in pursuance of the power by the said section conferred upon them, order that in addition to the notice of accidents specified in sub-sections (1) (2) (3) and (4) above recited, notice in conformity with the provisions of the said section shall be sent to them by every company to which such section applies, of every accident of the nature following; that is to say,

1. As regards the locomotive power and rolling stock—
  - (a) The bursting of a boiler.
  - (b) The failure of a rope used in working an incline.
  - (c) The failure of a wheel or tyre.
  - (d) The failure of an axle.
  - (e) The failure of the hornplate of an engine.
  - (f) The failure of the axle-guard of any vehicle in a passenger train.
  - (g) The failure of any other part of locomotive engines, tenders, or vehicles, not included in the above, which leads to an accident to a passenger train.

*Note.*—Any return of the failure of a boiler, a tyre, or an axle, should be accompanied by a diagram with particulars of construction and failure, and by a description of the nature of the materials it was made of, and the amount of work it had performed. Failures of tyres and axles should be reported on the forms approved by the Board of Trade.

2. As regards the permanent way and works—

- (h) The fracture of a rail in the permanent way of a passenger railway.
- (i) The "bursting" of the permanent way under a train on a passenger railway.
- (k) The failure of a bridge, viaduct, or large culvert, or of any part of any of them.
- (l) The failure of a tunnel or of any part of it.
- (m) The failure of the roof or any important part of a station.
- (n) Important slips in cuttings or embankments.
- (o) The failure of a revetment wall.
- (p) The flooding of a portion of permanent way.
- (q) The failure of any other portion of the permanent way or works, not included in the above, which leads to an accident to a passenger train.

*Note.*—In any return of the fracture of a rail the form of the rail should be stated, the weight per yard, the material it was made of, the length of service it had done, the manner in which it was fixed, and, if a double-headed rail, whether it had or had not been turned at the time it broke.

3. Miscellaneous accidents to rolling stock and permanent way, such as—

- (r) A train travelling in the wrong direction through points on the main line of a passenger railway.
- (s) An engine or train running over any horse, beast, or other obstruction, or through the gate or gates of a level crossing on a passenger railway.
- (t) Any fire in any part of a train, or at a station, or involving injury to any bridge or viaduct on a passenger railway.

The Board of Trade do further order that notices of the accidents recited in sub-section 1 shall be sent to them in the following manner; namely—

All fatal accidents occurring in the working of railways, whether to passengers, servants of railway companies, or other persons, to be reported by telegraph or otherwise, within twenty-four hours after the occurrence of the accident, and non-fatal accidents to be reported by post as early as practicable.

Non-fatal accidents to servants of railway companies to be reported whenever they are such as to prevent the servant injured, on any one of the three working days next after the occurrence of the accident, from being employed for five hours on his ordinary work.

Non-fatal accidents to persons other than servants of the companies to be in all cases reported.

Every notice sent to the Board of Trade in pursuance of the foregoing provisions of the said section shall be in the form hereto annexed, except as regards the failures of tyres and axles, which shall be in the forms "B" and "C" respectively, or as near thereto as circumstances admit.

COURTENAY BOYLE.

BOARD OF TRADE,  
31st October 1895.

17. FORM REFERRED TO IN THE FOREGOING ORDER

RAILWAY COMPANY

RETURN directed to be made to the BOARD OF TRADE of ACCIDENTS (in compliance with the Regulation of Railways Act, 1871, s. 6).

| Date of Accident, day and time at which it occurred. | Nature and Cause of Accident, and Place where it occurred; and if the Accident happened to a train belonging to a Company other than the Company owning or working the Railway, the Name of such Company. | Particulars of Injury to Persons. |                   |                                                                                                                                                                                                                                                                                               |                                                                                                                                   | Servants of Companies.                                                                            |                                           |                                                                             | REMARKS |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------|-----------------------------------------------------------------------------|---------|
|                                                      |                                                                                                                                                                                                           | Name of Person.                   | Nature of Injury. | Description stating whether Passenger, Servant of the Company, or of Contractor (if a Servant, specify the class of Service to which he may belong, Persons crossing at Public or Private Level Crossings (specifying which), Trespassers, Persons on business at Stations, or other Persons. | Whether Accident occurred from Causes beyond the control of the Persons injured, or from their own want of Caution or Misconduct. | Copy of Verdict at Coroner's Inquest (if in England, Wales, or Ireland) should death have ensued. | Number of regular Working Hours per diem. | Number of Hours injured Person had been on duty when the Accident occurred. |         |
|                                                      |                                                                                                                                                                                                           |                                   |                   |                                                                                                                                                                                                                                                                                               |                                                                                                                                   |                                                                                                   |                                           | Whether Person injured was over or under 18 years of age.                   |         |



18. THE RAILWAY REGULATION ACT, 1873 (36 & 37  
VICT. C. 76)

V. Every coroner in England and Ireland, within seven days after holding an inquest on the body of any person who is proved to have been killed on a railway, or to have died in consequence of injuries received on a railway, and in Scotland every procurator-fiscal within the like time and in like cases, shall make to one of Her Majesty's principal Secretaries of State, in such form as he may require, a return of the death and the cause thereof.

19. RETURN OF DEATH OF PERSON KILLED ON A  
RAILWAY, OR DYING FROM INJURIES RECEIVED  
ON A RAILWAY

RAILWAY REGULATION ACT, 1873, s. 5 (36 & 37  
VICT. C. 76)

The above Act requires every procurator-fiscal, within seven days after the inquiry, to make to the Secretary for Scotland, in such form as he may require, a return of the death and the cause thereof. The following is the form prescribed by the Secretary for Scotland:—

1. Name of Railway \_\_\_\_\_  
(Stating whether—  
(1) Open for public traffic,  
(2) In course of construction,  
(3) Belonging to private owners) \_\_\_\_\_
2. Place where Accident occurred \_\_\_\_\_
3. Date of Accident \_\_\_\_\_
4. Date of Inquiry \_\_\_\_\_
5. Place where Inquiry was held \_\_\_\_\_
6. Name of person killed or fatally  
injured } \_\_\_\_\_
7. Whether killed on the railway  
or dying in consequence of in-  
juries received on the railway } \_\_\_\_\_

## 8. Whether—

## 1. Servant—

(a) of Company \_\_\_\_\_  
(stating class of Service).(b) of Contractor \_\_\_\_\_  
(giving name and address of Contractor).

## 2. Passenger \_\_\_\_\_

3. Person crossing at public or }  
private level crossing } \_\_\_\_\_  
(specifying which)

## 4. Trespasser \_\_\_\_\_

5. Person on business at sta- }  
tions or sidings } \_\_\_\_\_

## 6. Other persons \_\_\_\_\_

9. Copy of Verdict of Jury where }  
Inquiry is made under Fatal }  
Accidents Act; and, where }  
otherwise, a statement of the }  
cause of death.

## 10. Remarks \_\_\_\_\_

Signature \_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

## CHAPTER IX.—BOILER EXPLOSIONS

20. THE BOILER EXPLOSIONS ACT, 1882 (45 & 46  
VICT. C. 22) AS AMENDED BY 53 & 54 VICT. C. 35.II. This Act shall extend to the whole of the United  
Kingdom.

III. In this Act the term “boiler” means any closed

vessel used for generating steam, or for heating water, or for heating other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes.

The term "court of summary jurisdiction" means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff-substitute, or other magistrate or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

IV. This Act shall not apply to any boiler used exclusively for domestic purposes, or to any boiler used in the service of Her Majesty.

V.—(1) On the occurrence of an explosion from any boiler to which this Act applies, notice thereof shall, within twenty-four hours thereafter, be sent to the Board of Trade by the owner or user, or by the person acting on behalf of the owner or user.

(2) The notice shall state the precise locality as well as the day and hour of the explosion, the number of persons injured or killed, in addition to the purposes for which the boiler was used, and, generally, the part of the boiler that failed, and the extent of the failure, and such other particulars, if any, as the Board of Trade, by notice inserted in the *London Gazette*, may require, and shall be in the form printed in the schedule to this Act, or in such other form as the Board of Trade may from time to time approve for the purpose.

(3) If default is made in complying with the requirements of this section, the person in default shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

VI.—(1) On receiving notice of a boiler explosion the Board of Trade may, if it thinks fit, appoint one or more competent and independent engineer or engineers, practically conversant with the manufacture and working of boilers, to make a preliminary inquiry with respect to the explosion, and the persons so appointed shall have the powers conferred on the court by sub-section (4) of this section. If it appears to the Board of Trade, either upon or without such preliminary inquiry, that a formal investigation of the causes and circumstances attending the explosion is expedient, the Board of Trade may direct a formal investigation to be held; and with respect to such investigation the following provisions shall have effect:—

(2) Formal investigations of boiler explosions shall be made at or near the place of such explosion by a court consisting of not less than two commissioners appointed by the Board of Trade, of whom one at least shall be a competent and practical engineer, specially conversant with the manufacture and

working of steam boilers, and one a competent lawyer. The court shall be presided over by one of the commissioners, the selection being made by the Board of Trade.

(3) Any such formal investigation shall be held in open court, in such manner, and under such conditions, as the commissioners may think most effectual for ascertaining the causes and circumstances of the explosion, and for enabling them to make the report hereinafter mentioned in this section.

(4) The court shall have, for the purpose of its investigations, all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and shall in addition have the following powers; namely—

- (a) The court, or anyone appointed by it, may enter and inspect any place or building, the entry or inspection whereof appears to the court requisite for the said purpose;
- (b) It may by summons under its hand require the attendance of all such persons as it thinks fit to call before it, and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as it thinks fit to make;
- (c) It may require and enforce the production of all books, papers, and documents which it considers important for the said purpose;
- (d) It may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination;
- (e) Every person so summoned, not being the owner or user of the boiler, or in the service or employment of the owner or user, or in anyway connected with the working or management of the boiler, shall be allowed by the Board of Trade such expenses as would be allowed to a witness attending on subpoena before a court of record, and in Scotland to a witness attending a criminal trial by jury in the sheriff court; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, and in Scotland to the auditor of the Court of Session, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses.

(5) The court making a formal investigation with respect to any boiler explosion, shall present a full and clear report to the Board of Trade, stating the causes of the explosion, and all the circumstances attending the same, with the evidence,



adding thereto any observations thereon, or on the evidence, or on any matters arising out of the investigation, which they think right to make; and the Board of Trade shall cause every such report to be made public in such manner as it thinks fit. When no formal investigation is held, the report presented to the Board of Trade by the engineer making a preliminary inquiry with respect to a boiler explosion shall be made public in such manner as the Board of Trade thinks fit.

VII. The court may order the costs and expenses of a preliminary inquiry or formal investigation, or any part thereof, including therein the remuneration of persons holding such inquiry or investigation, to be paid by any person summoned before it, or by the Board of Trade; and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any court of summary jurisdiction as if such costs and expenses were a penalty imposed by such court.

The Board of Trade may, if they think fit, pay to the persons holding any inquiry or investigation under this Act such remuneration as they may with the consent of the Treasury appoint.

If and so far as not otherwise provided for, all costs and expenses incurred by the Board of Trade, including any remuneration paid under this section, and any costs and expenses ordered by the court to be paid by the Board of Trade, shall be paid out of moneys to be provided by Parliament.

VIII. Any fine payable under this Act shall be recoverable, in Scotland, in the manner provided by the Summary Jurisdiction Acts, 1864 and 1881, and of any Act or Acts amending the same.

## SCHEDULE

REPORT OF EXPLOSION of a STEAM BOILER to be sent to the  
BOARD OF TRADE within twenty-four hours after the  
occurrence of an EXPLOSION

*See Section 5*

1. Name of premises or works on which the boiler exploded.
2. Address by the post.
3. Day and hour of explosion.
4. Number of persons killed.
5. Number of persons injured.
6. General description of the boiler.
7. Purposes for which the boiler was used.
8. Part of the boiler which failed, and the extent of failure generally.

9. Pressure at which the boiler was worked.  
 10. Name and address of any society or association by whom the boiler was last inspected or insured.

*(Signature of person responsible for  
 the accuracy of the particulars  
 contained in this form)*\_\_\_\_\_

*Address*\_\_\_\_\_

*Date*\_\_\_\_\_

## 21. THE BOILER EXPLOSIONS ACT, 1890 (53 & 54 VICT. C. 35)

II. So much of section four of the Boiler Explosions Act, 1882, as relates to any boiler other than a boiler used in the service of Her Majesty, or used exclusively for domestic purposes, is hereby repealed, and the said Act shall apply in the case of any boiler explosion occurring on board a British ship.

III. In the case of an explosion occurring at sea, the notice required by section five of the Boiler Explosions Act, 1882, shall be sent by the owner or master of the ship, and shall be sent within twenty-four hours after the occurrence of the explosion, or as soon thereafter as possible; but this provision shall not apply where a report of the explosion has been duly sent in pursuance of section three hundred and twenty-six of the Merchant Shipping Act, 1854.

IV. Every person who refuses to attend as a witness after having been required so to do in the manner specified in section six of the Boiler Explosions Act, 1882, and after having had a tender made to him of the expenses therein mentioned, or who refuses or neglects to make any answer, or to give any return, or to produce any documents in his possession, or to make or subscribe any declarations required under the powers of the said Act, shall for each such offence be liable to a fine not exceeding ten pounds, recoverable as therein provided.

## CHAPTER X.—SHIPS AND BOATS

### 22. THE MERCHANT SHIPPING ACT 1894 (57 & 58 VICT. C. 60)

CCXL. The master of a ship for which an official log is required shall enter or cause to be entered in the official log-book the following matters (that is to say):—

. . . . .

(5) Every case of illness or injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted (if any) ;

*Provisions as to Deaths, Injuries, Ill-treatment, Punishments,  
and Casualties in Fishing Boats*

CCCLXXXV.—(1) The skipper of a fishing boat shall keep a record of the following occurrences ; namely—

- (i.) of every death, injury, ill-treatment, or punishment of any member of his boat's crew while at sea, or of any person on board his boat ; and
- (ii.) of every casualty to his fishing boat or any boat belonging to her.

(2) The skipper shall produce the record so kept to any superintendent when required by him, and shall also send the same to the superintendent at the port to which the boat belongs at such periods as the Board of Trade require by any directions endorsed on the forms approved by them.

(3) If any such occurrence has happened in the case of a fishing boat, the skipper of the boat shall make to the superintendent at the port where his boat's voyage ends, within twenty-four hours of the boat's arrival at that port, a report of the occurrence.

(4) The record and report under this section shall be in such form and contain such particulars as the Board of Trade require.

(5) If a skipper fails without reasonable cause to comply with any requirement of this section, he shall for each offence be liable to a fine not exceeding twenty pounds.

CCCLXXXVI.—(1) Where any such occurrence as in the last preceding section mentioned happens, or is supposed to have happened, the superintendent at or nearest to the port at which the fishing boat arrives after the occurrence, or to which the boat belongs, may inquire into the cause and particulars of the occurrence, and, if a report as to the occurrence is made to him in pursuance of the said section, may make on the report an endorsement either that in his opinion the particulars in the report are true, or otherwise to such effect as in his opinion his information warrants.

(2) For the purpose of the inquiry, a superintendent shall have all the powers of a Board of Trade inspector under this Act.

(3) If, in the course of the inquiry, it appears to the superintendent that any such occurrence as aforesaid has been caused or was accompanied by violence or the use of any improper



means, he shall report the matter to the Board of Trade, and shall also, if the emergency of the case in his opinion so requires, take immediate steps for bringing the offender to justice, and may for that purpose, if in his discretion he thinks it necessary, cause him to be arrested, and thereafter dealt with in due course of law.

### *Report of Accidents*

CCCCXXV.—(1) When a steamship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency, either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of the accident or damage, or as soon thereafter as possible, transmit to the Board of Trade, by letter signed by the owner or master, a report of the accident or damage, and of the probable occasion thereof, stating the name of the ship, her official number (if any), the port to which she belongs, and the place where she is.

(2) If the owner or master of a steamship fails without reasonable cause to comply with this section, he shall for each offence be liable to a fine not exceeding fifty pounds.

(3) This section shall apply to all British ships, and to all foreign steamships carrying passengers between places in the United Kingdom.

### *Inquiries and Investigations as to Shipping Casualties*

CCCCLXIV. For the purpose of inquiries and investigations under this Part of this Act, a shipping casualty shall be deemed to occur—

- (1) When on or near the coasts of the United Kingdom any ship is lost, abandoned, or materially damaged;
- (2) When on or near the coasts of the United Kingdom any ship has been stranded or damaged, and any witness is found in the United Kingdom;
- (3) When on or near the coasts of the United Kingdom any ship causes loss or material damage to any other ship;
- (4) When any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of the United Kingdom;
- (5) When in any place any such loss, abandonment, material damage, or casualty as above mentioned occurs, and any witness is found in the United Kingdom;
- (6) When in any place any British ship is stranded or



damaged, and any witness is found in the United Kingdom;

- (7) When any British ship is lost or is supposed to have been lost, and any evidence is obtainable in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of.

CCCCCLXV.—(1) Where a shipping casualty has occurred a preliminary inquiry may be held respecting the casualty by the following persons; namely—

- (a) Where the shipping casualty occurs on or near the coasts of the United Kingdom, by the inspecting officer of the coastguard or chief officer of customs residing at or near the place at which the casualty occurs; or
- (b) Where the shipping casualty occurs elsewhere, by the inspecting officer of the coastguard or chief officer of customs residing at or near any place at which the witnesses with respect to the casualty arrive or are found or can be conveniently examined; or
- (c) In any case by any person appointed for the purpose by the Board of Trade.

(2) For the purpose of any such inquiry the person holding the same shall have the powers of a Board of Trade inspector under this Act.

CCCCCLXVI.—(1) A person authorised as aforesaid to make a preliminary inquiry shall in any case where it appears to him requisite or expedient (whether upon a preliminary inquiry or without holding such an inquiry) that a formal investigation should be held, and in any case where the Board of Trade so directs, apply to a court of summary jurisdiction to hold a formal investigation, and that court shall thereupon hold the formal investigation.

(2) A wreck commissioner appointed under this Act shall, at the request of the Board of Trade, hold any formal investigation into a shipping casualty under this section, and any reference to the court holding an investigation under this section includes a wreck commissioner holding such an investigation.

(3) The court holding any such formal investigation shall hold the same with the assistance of one or more assessors of nautical, engineering, or other special skill or knowledge, to be appointed out of a list of persons for the time being approved for the purpose by a Secretary of State, in such manner and according to such regulations as may be prescribed by rules made under this Part of this Act with regard thereto.

(4) Where a formal investigation involves or appears likely to involve any question as to the cancelling or suspension of

the certificate of a master, mate, or engineer, the court shall hold the investigation with the assistance of not less than two assessors having experience in the merchant service.

(5) It shall be the duty of the person who has applied to a court to hold a formal investigation to superintend the management of the case, and to render such assistance to the court as is in his power.

(6) The court after hearing the case shall make a report to the Board of Trade containing a full statement of the case and of the opinion of the court thereon, accompanied by such report of, or extracts from, the evidence, and such observations as the court think fit.

(7) Each assessor shall either sign the report or state in writing to the Board of Trade his dissent therefrom and the reasons for that dissent.

(8) The court may make such order as the court think fit respecting the costs of the investigation, or any part thereof, and such order shall be enforced by the court as an order for costs under the Summary Jurisdiction Acts.

(9) The Board of Trade may, if in any case they think fit so to do, pay the costs of any such formal investigation.

(10) For the purposes of this section the court holding a formal investigation shall have all the powers of a court of summary jurisdiction when acting as a court in exercise of their ordinary jurisdiction.

(11) Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person, that person shall have an opportunity of making a defence.

(12) Formal investigations into shipping casualties under this section shall be held in some town hall, assize or county court, or public building, or in some other suitable place to be determined according to rules made under this Part of this Act with regard thereto, and, unless no other suitable place is in the opinion of the Board of Trade available, shall not be held in a court ordinarily used as a police court, and all enactments relating to the court shall for the purposes of the investigation have effect as if the place at which the court is held were a place appointed for the exercise of the ordinary jurisdiction of the court.

(13) Where an investigation is to be held in Scotland, the Board of Trade may remit the same to the Lord Advocate to be prosecuted in such manner as he may direct.

CCCCCLXVIII. When any loss of life arises by reason of any casualty happening to or on board any boat belonging to a fishing vessel, the Board of Trade may, if they think fit, cause an inquiry to be made or a formal investigation to be held as

in the case of a shipping casualty, and the provisions of this Act relating thereto shall apply accordingly.

*Rehearing of Investigations and Inquiries*

CCCCCLXXV.—(1) The Board of Trade may, in any case where under this Part of this Act a formal investigation as aforesaid into a shipping casualty, or an inquiry into the conduct of a master, mate, or engineer has been held, order the case to be reheard either generally or as to any part thereof, and shall do so—

- (a) if new and important evidence which could not be produced at the investigation or inquiry has been discovered; or
- (b) if for any other reason there has in their opinion been ground for suspecting that a miscarriage of justice has occurred.

(2) The Board of Trade may order the case to be reheard, either by the court or authority by whom the case was heard in the first instance or by the wreck commissioner, or in England or Ireland by the High Court, or in Scotland by the Senior Lord Ordinary, or any other judge in the Court of Session whom the Lord President of that court may appoint for the purpose, and the case shall be so reheard accordingly.

(3) Where on any such investigation or inquiry, a decision has been given with respect to the cancelling or suspension of the certificate of a master, mate, or engineer, and an application for a rehearing under this section has not been made or has been refused, an appeal shall lie from the decision to the following courts; namely—

- (a) If the decision is given in England or by a naval court, to the High Court;
- (b) If the decision is given in Scotland, to either division of the Court of Session;
- (c) If the decision is given in Ireland, to the High Court in Ireland.

(4) Any rehearing or appeal under this section shall be subject to and conducted in accordance with such conditions and regulations as may be prescribed by rules made in relation thereto under the powers contained in this Part of this Act.

*Supplemental Provisions as to Investigations and Inquiries*

CCCCCLXXVI.—(1) Where a stipendiary magistrate is in any place a member of the local marine board, a formal investigation at that place into a shipping casualty shall, whenever he happens to be present, be held before that stipendiary magistrate.



(2) There shall be paid out of the Mercantile Marine Fund to the stipendiary magistrate, if he is not remunerated out of money provided by Parliament under this Act, such remuneration by way of an annual increase of salary, or otherwise, as a Secretary of State, with the consent of the Board of Trade, may direct.

CCCCLXXIX.—(1) The Lord Chancellor may (with the consent of the Treasury so far as relates to fees) make general rules for carrying into effect the enactments relating to formal investigations, and to the rehearing of, or an appeal from, any investigation or inquiry held under this Part of this Act, and in particular with respect to the appointment and summoning of assessors, the procedure, the parties, the persons allowed to appear, the notice to those parties or persons or to persons affected, the amount and application of fees, and the place in which formal investigations are to be held.

(2) Any rule made under this section while in force shall have effect as if it were enacted in this Act.

(3) Any rule made under this section with regard to the rehearing of, or appeals from, any investigation or inquiries as to the appointment of assessors, and as to the place in which formal investigations are to be held, shall be laid before both Houses of Parliament as soon as may be after it is made.

DCCXXIX.—(1) An inspector so appointed (in this Act referred to as a Board of Trade inspector) and any person having the powers of a Board of Trade inspector—

- (a) may go on board any ship and inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage; and
  - (b) may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make; and
  - (c) may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for the purpose of his report, and may require answers or returns to any inquiries he thinks fit to make; and
  - (d) may require and enforce the production of all books, papers, or documents which he considers important for the purpose of his report; and
  - (e) may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.
- (2) Every witness summoned under this section shall be



allowed such expenses as would be allowed to a witness attending on subpoena to give evidence before any court of record, or if in Scotland to a witness attending on citation the Court of Justiciary ; and in case of any dispute as to the amount of those expenses, the same shall be referred in England or Ireland to one of the masters or registrars of the High Court, and in Scotland to the Queen's and Lord Treasurer's Remembrancer, and the officer shall, on request made to him for that purpose under the hand of the inspector or person having the powers of an inspector, ascertain and certify the proper amount of those expenses.

(3) If any person refuses to attend as a witness before a Board of Trade inspector or before any person having the powers of a Board of Trade inspector, after having been required to do so in manner provided by this section, and after having had a tender made to him of the expenses (if any) to which he is entitled under this section, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which an inspector or person having the powers of an inspector is hereby empowered to require, that person shall for each offence be liable to a fine not exceeding ten pounds.

DCCXXX. If any person wilfully impedes a Board of Trade inspector or any person having the powers of a Board of Trade inspector in the execution of his duty, whether on board a ship or elsewhere, that person shall for each offence be liable to a fine not exceeding ten pounds, and may be seized and detained by the inspector or person having the powers of an inspector, or by any person or persons whom that inspector or person may call to his assistance, until he can be conveniently taken before some justice of the peace or other officer having proper jurisdiction.

## 23. THE SHIPPING CASUALTIES RULES, 1895

### *Short Title and Commencement*

I. These Rules may be cited as the Shipping Casualties Rules, 1895. They shall come into operation on the 1st day of April 1895, and shall, so far as practicable, and unless otherwise expressly provided, apply to all matters arising in any pending investigation, and also to all investigations instituted on or after the said day.

### *Interpretation*

II. In these Rules, unless the context or subject-matter otherwise requires—

“Investigation” means a formal investigation into a shipping casualty.

“Judge” means the Wreck Commissioner, sheriff, sheriff-substitute, stipendiary magistrate, justices, or other authority empowered to hold an investigation.

“List of Assessors” means the existing list and classification of assessors for shipping casualties approved by the Secretary of State set out in Part II. of the Appendix to these Rules, or the list and classification of assessors for the time being approved by the Secretary of State.

“Court of Appeal” means the court by which appeals from decisions given in investigations or inquiries into shipping casualties are for the time being heard, under the Merchant Shipping Act, 1894, or any Act amending that Act.

#### *Notice of Investigation*

III. When an investigation has been ordered, the Board of Trade may cause a notice, to be called a notice of investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who in their opinion ought to be served with such notice. The notice shall contain a statement of the questions which, on the information then in possession of the Board of Trade, they intend to raise on the hearing of the investigation, and shall be in the Form No. 1 in Part I. of the Appendix, with such variations as circumstances may require. The Board of Trade may, at any time before the hearing of the investigation, by a subsequent notice amend, add to, or omit any of the questions specified in the notice of investigation.

IV. The Board of Trade, and any certificated officer upon whom a notice of investigation has been served, shall be deemed to be parties to the proceedings.

V. Any other person upon whom a notice of investigation has been served, and any person who shows that he has an interest in the investigation, shall have a right to appear, and any other person may, by leave of the judge, appear, and any person who appears under this Rule shall thereupon become a party to the proceedings.

#### *Notice to Produce*

VI. A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matters in difference between them, and which are

in the possession or under the control of such other party; and if the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

*Notice to Admit*

VII. A party may give to any other party notice in writing to admit any documents (saving all just exceptions), and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the judge is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice has been given, except where the omission to give the notice has, in the opinion of the officer by whom the costs are taxed, caused a saving of expense.

*Affidavits*

VIII. Affidavits may, by permission of the judge, be used as evidence at the hearing.

*Proceedings in Court*

IX. At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom a notice of investigation has been served, or any of them, are present or not.

X. The proceedings on the investigation shall commence with the production and examination of witnesses by the Board of Trade. These witnesses, after being examined on behalf of the Board of Trade, may be cross-examined by the parties in such order as the judge may direct, and may then be re-examined by the Board of Trade. Questions asked, and documents tendered as evidence in the course of the examination of these witnesses, shall not be open to objection merely on the ground that they do or may raise questions which are not contained in, or which vary from, the statement of the case, or questions specified in the notice of investigation.

XI. When the examination of the witnesses produced by the Board of Trade has been concluded, the Board of Trade shall state in open court the questions in reference to the casualty, and the conduct of the certificated officers, or other persons connected therewith, upon which the opinion of the court is desired. In framing the questions for the opinion of the court the Board of Trade may make such modifications in,



additions to, or omissions from the questions in the notice of investigation as, having regard to the evidence which has been given, the Board of Trade may think fit.

XII. After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon, and determine the questions so stated. Each party to the investigation shall be entitled to address the court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined, and re-examined in such order as the judge shall direct. The Board of Trade may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the Board of Trade.

XIII. When the whole of the evidence in relation to the questions for the opinion of the court has been concluded, any of the parties who desire so to do may address the court upon the evidence, and the Board of Trade may address the court in reply upon the whole case.

XIV. The judge may adjourn the investigation from time to time and from place to place, and where an adjournment is asked for by a party to the investigation or by the Board of Trade, the judge may impose such terms as to payment of costs or otherwise as he may think just as a condition of granting the adjournment.

XV. Except when the certificate of an officer is cancelled or suspended, in which case the decision shall always be given in open court, the judge may deliver the decision of the court either *viva voce* or in writing, and if in writing it may be sent or delivered to the parties. In the latter case it shall not be necessary to hold a court merely for the purpose of delivering the decision of the court.

XVI. The judge may order the costs and expenses of the investigation, or any part thereof, to be paid by the Board of Trade or by any other party. An order for payment of costs shall be in the Form No. 2 in Part I. of the Appendix, with such variations as circumstances may require.

XVII. At the conclusion of the investigation the judge shall report to the Board of Trade. The report shall be in the Form No. 3 in Part I. of the Appendix, with such modifications as circumstances may require.

*Copy of Report when Certificate affected*

XVIII. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Board of Trade shall, on



application by any party to the proceedings, give him a copy of the report made to the Board.

### *Appeals*

XIX. Where an appeal is to the High Court in England, it shall be to a Divisional Court of the Probate Divorce and Admiralty Division of the High Court.

XX. Every appeal under sections 475 and 478 of the Merchant Shipping Act, 1894, shall be conducted in accordance with the conditions and regulations following; namely—

- (a) The appellant shall, within the time hereinafter mentioned, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal, and shall also, within two days after setting down the appeal, give to the said parties notice of the general grounds of the appeal.
- (b) Notice of appeal shall be served either within twenty-eight days from the date on which the decision is pronounced, or within twenty-one days from the date on which the report is issued in print in London by the Board of Trade.
- (c) If the appeal is brought by any party other than the Board of Trade, the appellant shall before the appeal is heard give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal, as the judge from whose decision the appeal is brought on application made to him for that purpose may direct.
- (d) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the officer for the time being appointed for that purpose by the Court of Appeal, a copy of the notice of appeal, and the officer shall thereupon set down the appeal by entering it in the proper list.
- (e) The Court of Appeal shall be assisted by not less than two assessors to be selected, in the discretion of that court, having regard to the nature of each case, from either or both of the following classes:—
  - 1. Elder Brethren of the Trinity House.
  - 2. Persons approved from time to time by the Secretary of State as assessors for the purpose of formal investigations into shipping casualties, under sections 466 and 467 of the Merchant Shipping Act, 1894.
- (f) The Court of Appeal may, if it thinks fit, order any

other person, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as the Court of Appeal may think fit. Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.

- (g) The evidence taken before the judge from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the judge, or of the shorthand writer, clerk, secretary, or other person authorised by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; and a copy of the evidence, and of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the judge or other person having charge thereof, on payment of the usual charge for copying.
- (h) The Court of Appeal shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given with special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought.
- (i) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as the court may think just.
- (j) Subject to the foregoing provisions of this rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal, but there shall not be anything in the nature of pleadings other than the notice of the general grounds of the appeal, except by special permission of the Court of Appeal.
- (k) On the conclusion of an appeal the Court of Appeal

shall send to the Board of Trade a report of the case in such form as the Court of Appeal may think fit.

*Rehearings by Order of Board of Trade*

XXI.—(a) Where the Board of Trade direct a rehearing, under section 475 or 478 of the Merchant Shipping Act, 1894, they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the rehearing, as the circumstances of the case may, in the opinion of the Board of Trade, permit.

(b) The provisions distinguished as (c), (f), (g), (h), (i), (j), and (k) of the last foregoing rule shall apply to a rehearing as if it were an appeal, and as if the court or authority before whom the rehearing takes place were the Court of Appeal.

*Appointment of Assessors*

XXII. Subject to these Rules, assessors for investigations into shipping casualties shall be appointed from the list of assessors by the Secretary of State.

XXIII. If any investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master, mate, or engineer, there shall be appointed from the list of assessors not less than two assessors from Class I. and Class II. or from either of those classes.

XXIV. Subject to any special appointment or appointments which the Secretary of State may think it expedient to make in any case where special circumstances appear to him to require a departure from these Rules (the requirements of the last preceding rule being always complied with), assessors shall be appointed as follows:—

- (1) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate, but not of an engineer, at least two assessors shall be appointed from Class I.
- (2) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a sailing ship, one at least of the assessors shall be appointed from sub-section (a) of Class I.; and where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a steamship, one at least of the assessors shall be appointed from sub-section (b) of Class I.
- (3) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate



of an engineer, one at least of the assessors shall be appointed from Class II.

XXV. The Board of Trade shall inform the Secretary of State when assessors are required, and shall state from which of the aforesaid classes assessors ought in their opinion to be appointed, but the Board of Trade shall not request the appointment of any individual assessor.

XXVI. An appointment made by the Secretary of State of any assessor or assessors for an investigation shall not be open to question, on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

#### *Computation of Time*

XXVII. In computing the number of days within which any act is to be done, they shall be reckoned exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast, or thanksgiving, or holiday, in which case the time shall be reckoned exclusive of that day also.

#### *Service of Notices*

XXVIII. Any notice, summons, or other document issued under these Rules may be served by sending the same by registered letter to the address of the person to be served.

XXIX. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

#### *Repealing Clause*

XXX. The under-mentioned Rules are hereby annulled, but nothing in these Rules shall affect the previous operation of, or anything done or suffered under, any of the said Rules—

- (1) The Shipping Casualties Rules, 1878.
- (2) The Shipping Casualties Rules, 1879.
- (3) The additional Rules as to investigations into shipping casualties made in 1880.
- (4) The Shipping Casualties (Appeal and Rehearing) Rules, 1880.

#### *Publication of Rules*

XXXI. A copy of these Rules shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them shall be entitled to do so.

(Signed)      HERSCHELL, C.

Dated the 7th day of March 1895.



## APPENDIX TO SHIPPING RULES

## PART I

## FORMS

The following forms shall be used, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the judge shall be of opinion that the deviation was material:—

*No. 1.—Notice of Investigation*

To \_\_\_\_\_ master, mate, engineer, owner,  
 etc., of \_\_\_\_\_ or \_\_\_\_\_ belonging to the ship \_\_\_\_\_ of \_\_\_\_\_

I hereby give you notice that the Board of Trade have ordered a formal investigation into the circumstances attending the \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

and that subjoined hereto is a copy of a report [*or* statement of the case] upon which the said investigation has been ordered. I further give you notice to produce to the Court [your Board of Trade certificate, the log-books of the vessel, and] any [other] documents relevant to this case which may be in your possession.

I have further to give you notice that on the information at present obtained by the Board of Trade, the questions annexed hereto are those upon which it appears desirable, and upon which they propose, to take the opinion of the Court; but these questions will be subject to alteration, addition, omission, or amendment by the representative of the Board of Trade at the investigation, after the witnesses called by the Board of Trade have been examined.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

*Solicitor, Board of Trade.*

I. *Report [or statement of case].*

II. *Questions.*

1. Whether the \_\_\_\_\_

[*Here insert the proposed questions.*]



## PART II

CLASSIFICATION OF LIST OF ASSESSORS AND QUALIFICATIONS  
PRESCRIBED FOR EACH CLASS

## THE MERCHANT SHIPPING ACT, 1894 (57 &amp; 58 VICT. c. 60)

Whereas by section 466 of the Merchant Shipping Act, 1894, it is provided that—

The court holding a formal investigation into a shipping casualty shall hold the same with the assistance of one or more assessors of nautical, engineering, or other special skill or knowledge, to be appointed out of a list of persons for the time being approved for the purpose by a Secretary of State, in such manner and according to such regulations as may be prescribed by Rules made under this Act with regard thereto.

And whereas by section 467 of the Merchant Shipping Act, 1894, it is enacted as follows:—

- (1) The list of persons approved as assessors for the purpose of formal investigations into shipping casualties shall be in force for three years only, but persons whose names are on any such list may be approved for any subsequent list.
- (2) The Secretary of State may at any time add or withdraw the name of any person to or from the list.
- (3) The list of assessors in force at the passing of this Act shall, subject as aforesaid, continue in force till the end of the year one thousand eight hundred and ninety-five.

The Secretary of State has directed that the assessors shall, so far as in his opinion circumstances permit, be taken in order of rotation within each class or sub-class, and has further directed that the assessors placed by him on the list of assessors shall be classified according to their qualifications as follows:—

*Class I.—Mercantile Marine Masters*

(a) Five years' service as a master in the merchant service, of which two years must have been service in command of a sailing ship, with a certificate of competency.

(b) Five years' service as a master in the merchant service, of which two years must have been service in command of a steamship, with a certificate of competency.

*Class II.—Mercantile Marine Engineers*

Five years' service as an engineer in the merchant service, and at the time of appointment holding a first-class certificate of competency as an engineer.

*Class III.—Royal Navy*

Rank of Admiral or Captain and three years' service in command of one of Her Majesty's ships at sea, or rank of Staff Commander and three years' service in that rank in one of Her Majesty's ships at sea.

*Class IV.—Persons of Nautical Engineering or other Special Skill or Knowledge*

(a) Such qualification as is in the opinion of the Secretary of State requisite for ordinary cases.

(b) Such qualification as is in the opinion of the Secretary of State requisite for special cases.





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